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VOL. II. NO. 1

MARCH, 1913

Taxation of Corporations in Illinois

OTHER THAN RAILROADS, SINCE 1872

BY

JOEL ROSCOE MOORE, A.M.

PRICE 55 CENTS

URBANA-CHAMPAIGN, ILLINOIS
PUBLISHED BY THE UNIVERSITY
1913

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PREFACE

This is a study of the taxation of corporations in Illinois, other than railroads, since 1872. It considers chiefly those features of the state and local taxing methods that have been designed especially for taxing the intangible property of corporations.

Detailed exposition of the taxing of corporations under the provisions of the general property tax, is not attempted; the general property tax is a large study in itself. The same policy has been followed in regard to special taxes on corporations. Railroad taxes are excluded also because they require a lengthy separate study; and any general statement in these pages, may or may not apply to railroad corporations. Eighteen hundred seventy-two is the date selected for the beginning of this study because under the new constitution adopted in 1870, the general assembly in that year enacted the general revenue law which in its main features has remained unchanged to the present.

This study was made in 1909; but has been edited and revised to include changes in the revenue law and data since that time.

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CHAPTER I.

INTRODUCTION AND BRIEF ANALYSIS OF CORPORATION TAXES IN ILLINOIS.

Business organization in Illinois, as in other states, has long been predominantly that of the corporation. Every year of the last forty years, the period under examination, has seen a larger number of business enterprises adopting the methods of investment, management and liability peculiar to the corporation. Greater and greater amounts of property have been taking a more or less intangible form. Some of these forms are stocks, bonds, leases, franchises and good will.

This intangible form of property defies the most assiduous efforts of the local assessor to value it properly¹ under the head of real estate and personalty. This is not necessarily because of obstructions placed in his way by the corporation, as a person seeking to evade proper assessment, though too often such may be the case; but it is largely due to an inherent defect in the system of taxing on a general property valuation, namely, that the system was not devised so as to reach intangible values, (or "invisible value", as denominated by a certain prominent Chicago corporation.²) Our New England forefathers adopted the general property tax at a time when the modern business corporation was practically non-existent, when a person's ability to pay taxes could be quite accurately determined by the amount of his real estate and personal property. Both were intimately associated with his person and were in a form that could be seen and valued by the assessor. But the corporate person of to-day as a busi-

¹Argued by corporation that it is practically impossible to value franchise. *Porter et al vs. R. R. I. & St. L. R. R. Co.*, 76 Ill. 561 (1875).

²Chicago Chamber of Commerce, letter to State Board of Equalization, seeking to justify its refusal to return statement of capital stock value. *Proceedings State Board of Equalization*, 1873, p. 17.

ness unit often controls real estate whose value to the corporation is, for the assessor, very difficult to determine.³ Secondly, as a business unit, the corporation very often controls personal property in the shape of stocks, bonds, franchises and good will,⁴ the values of which to the corporation it is practically impossible for the assessor to determine.

This defect in the general property method whereby corporations escape proper assessment has long been recognized in American states, especially the older ones. Several of the Commonwealths have gone so far toward correcting it as to put corporation taxes into a separate system.⁵ In Illinois the defect became a matter of administrative and constitutional concern a few years prior to and at the time of the framing of the constitution of 1870. Evidence on this point may be found in the records of the State Board of Equalization in 1867,⁶ and in the records of the debates in the Constitutional Convention of 1869.⁷ But while, perhaps, under the present constitution, of 1870, a separate system might have been devised for taxing corporations in Illinois,⁸ none has, as yet, been devised by the legislature.

However, something has been done toward remedying the defect, above discussed, in the assessment of intangible property of corporations. In 1872 the legislature enacted a new revenue law, which modified the system of assessment in regard to the property of corporations organized under the laws of Illinois.

In taking up the analysis of corporation taxes under

³*E.g.* road-bed, mines, timber lands and wharf, dock and elevator sites.

⁴Monopoly of organization and services might be added.

⁵*E.g.*, New York, Massachusetts, New Jersey, Pennsylvania.

⁶*Proceedings State Board of Equalization, 1867*, pp. 37-38, 58-59.

⁷Debates and Proceedings of Constitutional Convention, pp. 211, 263.

⁸The proposal of the Revenue Commission of 1885-6 assumes as much. Also, so argued by Gov. Oglesby. Rep. to Assembly, 1887, vol. I, p. 13A. See also opinion Sup. Ct., *Raymond vs. Hartford Fire Ins. Co.*, 196 Ill. 329 (1902) *obiter*.

the system established since 1872, it will be well first to define them. In the words of Professor Seligman, "Taxation of the corporation does not mean taxation of the security holder who has purchased the stock or bond from the original owner."⁹ It has been argued that the taxation of the shares of stock in the hands of stockholders is also a tax upon the corporation, and that the shareholders, not the corporation, own the properties of the corporation; but in denial of this, it has been held by the Courts of Illinois, of the United States and of England, that the property of the shareholders in a corporation is quite distinct from that of the corporation.¹⁰ Evidently then Professor Seligman's definition of what is not a corporation tax, has found standing in jurisprudence. In a positive way, corporation taxes may be defined as those taxes which the corporation as a person, through its officers, must pay to the governments, local, state and national. This definition may be further extended in the words of the Supreme Court in 1876:

It has been held that a corporation is possessed of three kinds of property subject to taxation: 1. capital stock; 2. corporate property; 3. franchise.¹¹

The Justice in reinforcing the Court's opinion cites a similar opinion of the United States Supreme Court.¹² In the same year, 1876, the United States Supreme Court, in a corporation tax case, arising under the present Illinois law, the law of 1872, spoke as follows:

That the franchise, capital stock, business, and profits of all corporations are liable to taxation in the place where they do business, and by the State which creates them, admits of no dispute at this day.¹³

⁹*Pending Problems in Public Finance*. Pamphlet, 1904.

¹⁰Porter vs. R. R. I. & St. L. R. R. Co., 76 Ill. 561 (1875), citing opinion of U. S. Sup. Ct. 1865, "The tax on shares is not a tax on the banks", Van Allen vs. The Assessors, 3 Wallace 583 (1865), citing opinion of Lord Denman in case of Queen vs. Arnand (9 Adolphus & Ellis, N. S. 806).

¹¹Ottawa Glass Co. vs. McCaleb, 81 Ill. 556 (1876).

¹²Gordon vs. The Appeal Tax Court, 3 Howard 133 (1844).

¹³(Ill.) State Railroad Tax Cases, 2 Otto 603 (1876), citing Society for Savings vs. Coite, 6 Wall 607 (1867).

In the words of the Supreme Court of Illinois, capital stock is construed to mean "all the property and rights of the corporation, of any kind or nature, wherever located."¹⁴ This, as will be seen later, is a construction of a phrase, "capital stock including the franchise," occurring in the revenue law. For a definition of taxation on "franchise," as enumerated thirdly in the opinion above, Professor Seligman again is of assistance. In his article in the *Review of Reviews* for June, 1904, on "The Special Franchise Tax in New York," he defines a franchise tax on a corporation to be a tax: 1. on the right to be or become; 2. on the right to do or act; 3. on the right to make use of local privileges. An example of the first is a fee for incorporation; of the second, a license tax on business done; of the third, license tax for use of streets for tracks or gas mains.¹⁵

By way of summary, corporation taxes in Illinois may now be re-defined to be those taxes which the corporation, as a person, through its officers, pays on its realty and personalty, its capital stock, and its franchise values. Or, viewed from another angle, the taxation of corporations in Illinois means the attempt of the State to tax each¹⁶ corporation upon its actual value¹⁷ as a going concern.¹⁸ This, as already stated, is not accomplished, however, by a separate system of corporation taxes. The following brief analysis explains how it is attempted.

Since 1872 corporations have been taxed under two main heads: 1. Under the modified general property tax system; 2. under the police power of the State. The constitutional basis for the system lies in sections one and two

¹⁴O. & M. R. R. Co. vs. Weber, 96 Ill. 445 (1880).

¹⁵*Review of Reviews*, XXIX, 716-718.

¹⁶Certain classes of corporations are excepted; see chap. IV.

¹⁷One-third, rather, as in case of all other persons, since 1909. Prior to that on same scale as other property, ranging from 60% in '73 to 59% in the '80's to 25 and 20% in the '90's.

¹⁸Seager, "Introduction to Economics" p. 555 ff., "corporation taxes." Also Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1867).

of Article IX, the article on Revenue. They are as follows:¹⁹

Sec. 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person *and corporation* shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, innkeepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, and persons or *corporations owning or using franchises and privileges*, in such manner as it shall from time to time direct *by general law, uniform as to the class upon which it operates*.

Sec. 2. The specification of the objects and subjects of taxation shall not deprive the general assembly of the power to require other subjects or objects to be taxed in such *manner* as may be *consistent with the principles of taxation fixed in this constitution*.

Sections nine and ten of the Revenue article contain limitations upon that power. They are as follows:

Section 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. *For all other corporate purposes*, all municipal corporations may be vested with authority to assess and collect taxes; but *such taxes* shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.

Sec. 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but *shall require that all the taxable property* within the limits of municipal corporations *shall be taxed* for the payment of debts contracted under authority of law, *such taxes to be uniform in respect to persons and property*, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

Obviously section one of the revenue article of the constitution, as seen above, in italics, affords basis for acts of the legislature providing for the taxation of corporations under the two main heads outlined above at the beginning, namely, the general property tax, and police power, or regulative tax. Further, section one, clause two,

¹⁹Constitution of Illinois, 1870. Article IX. Italics not in original.

and section two, afford basis for the power of the legislature to modify the general property tax method so as to subject corporations, or rather certain classes of corporations, to a special scheme of assessment.

It is also obvious that the only limitations "fixed in this constitution" in regard to the power of the general assembly to devise improved methods of taxing corporations, consist—as suggested by the italicizing above—in the two fundamental principles of "uniformity and equality in the distribution of the burdens of taxation,"²⁰ and also in the mandates of sections one and ten, that all taxing must be "by general law", and that the legislature must require cities to levy a general property tax upon corporations as on other persons.

The general assembly—the courts sustaining by legal decisions²¹—has interpreted its power to be plenary enough "to tax occupations, franchises, privileges, and business and property interests of different kinds in a different manner from the manner prescribed for the taxation of property generally."²² And in 1872, the first general assembly, under the present constitution, framed a new revenue law which provided that under the modified general property tax system, corporations, other than railroads,²³ are taxed in two ways: 1. in general, on real estate and personal property, assessment being made by local assessors; 2. on "corporate excess", assessment being made by the State Board of Equalization. The first aims to assess the tangible property, the second to assess the intangible, "invisible", property of the corporation. The assessment of

²⁰Justice Carter, *Raymond vs. Hartford Fire Ins. Co.*, 196 Ill. 337 (1902).

²¹Treated in Chapter III.

²²Justice Carter's words; *Raymond vs. Hartford Fire Ins. Co.*, 196 Ill. 337 (1902); *Porter vs. R. R. I. & St. L. R. R. Co.*, 76 Ill. 561 (1875).

²³While this study excludes railroad corporations, it may be stated here that most of their tangible property as well as their "corporate excess" is assessed by the Board of Equalization. But the scheme of distribution of assessment is different.

the "excess" is returned ultimately to the local tax collector²⁴ and combined with the local assessment on tangible property, the sum of the two being taken as the assessed valuation upon which the corporation pays the general property tax, local and state.

A brief statement will suffice in regard to the local assessment of real estate and personal property. It is the same for corporations as for natural persons. The local assessor views and assesses the realty.²⁵ An officer of the corporation must list the personal property in May or June with the local assessor who may, if he thinks the list not "full, fair and complete", examine the corporation under oath as to the amount of the personal property.²⁶ (Law of 1898 provides that oath must be taken in every case.) If the corporation refuses to list or submits a fraudulent list, it is subject to a fine of from \$10 to \$2000, and to punishment for perjury.²⁷ When the corporation refuses to submit a list of its personal property, it is the duty of the assessor to return one "according to his best judgment and information."²⁸ From these lists the assessor determines the valuation on personalty. This valuation combined with the valuation on real property gives the tangible property valuation of the corporation.

The assessment of the intangible property of corporations, by the State Board of Equalization, under what is known as the "corporate excess" method, may also be discussed briefly here because its administration by the Board from 1872 to the present, will, in another chapter, be treated at length. The Board receives returns from each corporation²⁹ giving statements: 1. of its capital stock and its market or actual value on April 1; 2. of its funded debt;

²⁴Except in cases of telegraph companies, whose tax on "excess" is collected by county collector. Revenue law, Hurd, 1872, sec. 54.

²⁵Revenue law, Hurd, sections 4, 76.

²⁶Revenue law, Hurd, sections 4, 6, 24, 26.

²⁷*Idem*, sections 56, 57.

²⁸*Idem*, sections 26, 83.

²⁹Certain classes excepted; treated in Chapter IV.

3. of its assessed valuation on tangible property.³⁰ The Board also may have or may obtain information from other sources³¹ in regard to the value of the capital stock including the franchise, and of the funded debt. It determines the value of these and takes one-third of the amount (before 1909 one-fifth)³² to be the assessed value of the corporation's total property both tangible and intangible. Meanwhile the Board in its other duty of equalizing real and personal property assessments among counties may have found that the realty and personal property of the county where the corporation is located, is assessed above or below the average of state valuation, in which case the Board equalizes such county valuation by directing all property to be raised or lowered some certain percentage. Now, the Board, itself, uses this determined percentage to compute the equalized value of the realty and personal property of the corporation assessed by the local assessor and reported by the corporation to the Board.³³ The Board then deducts the amount of this equalized value of tangible property assessed locally, from the amount which, as already explained, it has determined to be the total value of the corporation's taxable property, both tangible and intangible.³⁴ The remainder, if any, is taken to be the assessment of the intangible value, the "corporate excess" which the Board is required to certify through the Auditor to the county clerk, to be entered on the tax roll³⁵ against the name of the corporation. Thus the intangible and tangible property of the corporation are reached, the one mainly through the Board of Equalization, the other through the local assessor.³⁶

³⁰Revenue law, Hurd, section 32.

³¹Quincy Bridge Co. vs. Adams County, 88 Ill. 615 (1878).

³²Laws of Ill., 1898, amending revenue law, p. 43.

³³*Proceedings State Board of Equalization*, 1873, p. 16 (Rules); also *State Board of Equalization vs. People*, 191 Ill. 528 (1901).

³⁴*Idem.*

³⁵Revenue law, Hurd, section 108.

³⁶But the law exempts the shares of stock in the hands of stockholders from local assessment, if Board assesses capital stock.

Besides taxing corporations under the modified general property tax system, Illinois also taxes them under the police, or regulative power. Domestic corporations are required to pay fees for incorporation, for increase of capital stock, and for filing periodical reports.³⁷ This is a growing source of State revenue, and is a subject itself large enough for separate study;³⁸ hence it is passed over briefly in this study. Foreign corporations are required to pay fees for filing reports, for licenses to their agents, and "reciprocal" taxes, fines, fees and so forth. Finally, all corporations are subject to municipal license and franchise taxes.

The foregoing analysis from the viewpoint of governmental purpose and method, may now be supplemented by one from another viewpoint, namely, the consideration of the character of the corporation. For this purpose, all corporations existing in Illinois may be classified as follows:

- A. Public Corporations.
 - I. County and township.
 - II. City and village.
 - III. Public institutions and bodies.
 - a. Educational.
 - b. Eleemosynary.
 - c. Administrative boards.
- B. Private Corporations.
 - I. Not for pecuniary profit.
 - a. Religious, educational, library, charitable, cemetery, agricultural, horticultural, mechanical, philosophical.
 - b. All others.
 - II. For pecuniary profit.
 - a. Business, or commercial.
 - 1. National Banks.
 - 2. Banks under general banking law.
 - 3. Building and loan associations.
 - 4. Corporations organized for purely manufacturing and mercantile purposes, for printing, publishing, mining and sale of coal, stock-breeding.

³⁷To be dealt with later.

³⁸See "Special Taxes", Master's thesis, University of Illinois, 1909, by T. E. Latimer.

5. Private banks organized under special laws, loan companies, domestic insurance companies, bridge companies, dredging companies, hotel companies, storage companies, laundry companies, amusement companies, hardware companies, dry goods companies, provision companies, restaurant companies, dairy companies, and many others. (Names of over 2500 private business corporations to be seen in tables of the Proceedings of Board of Equalization, 1907).
 6. Foreign private business corporations for profit, insurance companies noted especially.
- b. Public Service Corporations.
1. Telegraph, telephone.
 2. Express, freight, elevator.³⁹
 3. Street railroad, ferry, road, tunnel.
 4. Gas, coke, electric, water.
 5. Crematory, garbage.

In regard to class A little is to be said except that the constitution permits and the revenue law provides that the property of all such corporations shall be exempt from taxation.⁴⁰ In fact the constitution prohibits the general assembly from taxing municipalities.⁴¹

Those corporations in class B, I, a. must pay an incorporation fee of \$10; but if they use their property purely for social purposes, as indicated in their charters or constitutions, and not for pecuniary profit, the constitution permits⁴² and the revenue law provides⁴³ that they shall be exempt from taxation on the property. However, the law is construed very strictly; and if a society, association or organization own buildings or other property which is used for some foreign purpose, wholly or in part, and thereby returns the society a pecuniary profit, it must pay taxes on such property the same as though it had organized as a business corporation for pecuniary profit. More will be

³⁹Those that own public warehouses.

⁴⁰But city property owned and used in a foreign taxing district for profit to the city is taxable by that foreign district.

⁴¹Constitution of 1870, article IX, section 10.

⁴²Art. IX, sec. 3.

⁴³Revenue law, Hurd, sec. 2.

said about this in a chapter devoted to corporations exempt from "corporate excess" methods.

The corporations in class B, I, b. pay the \$10 incorporation fee, the annual fee for filing reports, and taxes upon their real estate and personalty. This class includes clubs and other social organizations, which have become incorporated. An incorporated labor organization also comes in this class, and its strike fund is taxable.

Corporations of classes B, II, a., 1, 2, 3, 4, with exception of national banks, pay incorporation fees which vary with the amount of the capital stock, and fees for increase of capital stock; also fees for filing annual report; and banks pay fees for their quarterly reports and expense of state inspection.⁴⁴ They all pay taxes on their real and personal property as assessed by the assessor; but for various reasons, they are not taxed on a "corporate excess", or intangible property valuation, assessed by the Board of Equalization. National banks are by the laws of the United States exempt from that tax.⁴⁵ The others are exempted by the revenue law of the state.⁴⁶ Full explanation of these exemptions from the "corporate excess" is given in Chapter IV.

Corporations in classes B, II, a, 5, and b. 1, 2, 3, 4, 5 are those which are taxed on their "corporate excess", as well as on real and personal property, and by fees for incorporation and increase of capital stock. This class comprises a small number of corporations; in 1907 the Board of Equalization determined the taxable valuation of 2,536 of them, of which only 1,302 companies were found to have an "excess"⁴⁷ value "over and above the assessed value of the

⁴⁴Further details in Chapter IV.

⁴⁵Act of Congress 1864. See Baker vs. First National Bank, 67 Ill. 297 (1873).

⁴⁶State banks exempted in 1867. Laws of Ill. 1867, special session, p. 6. But banks organized under special charter instead of under the general banking laws, were subject to the "corporate excess" assessment by the Board from 1873 to 1893.

⁴⁷Denominated "excess" in tabulated reports of Board.

tangible property.”⁴⁸ This assessment of the “corporate excess” is the most notable feature of the taxation of corporations in Illinois; and since the Board of Equalization from 1872 to the present, has had the administration of that duty, further exposition of this method will be given in the chapter on the “corporate excess” method of assessment.

It must be noted further in regard to public service corporations that in municipalities they are taxed also on their franchise rights “to make use of local privileges.”⁴⁹

Corporations in class II, B, a., 6, that is foreign corporations for profit, are, in general, taxable only on real and personal property. They cannot be taxed on capital stock and franchise right “to be”, that is by the “corporate excess” method. But, under the police power of the State, they are subject to license taxes for the franchise right “to do or act” or “to use local privileges.” Insurance companies are to be especially noted with respect to “reciprocal” taxes; but since the exposition is detailed, it has been placed in chapter five.

If this first chapter has given a general idea of the problem of taxing corporations, of the nature of corporation taxes, and of the method used in Illinois in taxing corporations, it has accomplished its purpose. The exposition of the details of the subject and of the historical development of corporation taxation since 1872, will be taken up in the following chapters.

⁴⁸Language of revenue law, Hurd, sec. 3. clause 4.

⁴⁹Seligman’s definition, quoted above.

CHAPTER II.

THE STATE BOARD OF EQUALIZATION RELATIVE TO "CORPORATE EXCESS" METHOD OF ASSESSMENT.

The State Board of Equalization was authorized by the legislature in 1867.¹ The first Board, which met at Springfield, October 1, 1867, was composed of twenty-six members: the Auditor of Public Accounts, and one member elected from each of the twenty-five Senatorial districts. The duty of the Board was to equalize the aggregate assessed valuation of property reported to the Auditor by the county clerks, that is to place all the counties of the State on the same percentage level of valuation. This the Board did by directing certain percentage increases of valuation to those counties which they found to be assessed below the general average percentage of cash valuation, and certain percentage decreases to those counties which they found to be assessed above the average.

But the Board of Equalization in the period from 1867 to 1872 had no power beyond that of equalizing county valuations. It had not the power to assess corporations as it has had since 1872. Neither was there any separate equalization of corporation property; the assessed valuation of such property in any given county was raised or lowered or left intact, as the case might be, after the equalizing direction of the Board, in the same manner and to the same extent as was other property in the same given county.

However, the influence of the Board on corporation taxation is worth noticing. In ascertaining the rightful valuation of property in the various counties, pursuant to their duty of equalizing, the Board early discovered at its first session the problem of properly assessing corpora-

¹Laws of 1867, p. 105.

tions.² The Committee on Personal Property reported a resolution recommending to local assessors that all bank, insurance, railroad and other stocks be returned at par value.³ The next year the Board passed resolutions recommending revision and amendment of the law,⁴ and in 1869 the Board authorized Chairman Lippincott and Secretary Stadden to prepare a revenue bill to present to the Board at its session in 1870.⁵ It was prepared as ordered and, from October 7, 1870, to October 24, the Board had the proposed revenue bill under consideration.⁶ On the 26th it was proposed to authorize a committee to urge its passage at the next legislature, but on the next day it was decided to leave the duty to Chairman Lippincott and Secretary Stadden.

Governor Palmer, in his message of January 4, 1871, to the General Assembly, recommended this bill "as the work of practical men of extensive experience."⁷ At the regular session in 1871 the legislature failed to provide a new revenue law, but at its special session in 1872, on March 30, enacted the general revenue law under which the State Board of Equalization has had a large part of the work of assessing the property of Illinois corporations.

In 1872 at a meeting of the Board of Equalization, Chairman Lippincott said:

I can not forget that the State of Illinois owes to this Board the inception of an improved revenue system, which in my opinion will prove of inestimable service to the state...The care, the intelligence, the conscientious effort displayed by this Board in the original draft of the revenue law, calls for my high admiration.⁸

From the foregoing facts drawn from records of the Board's proceedings relative to its action in regard to the new revenue law, from the statement of Governor Palmer,

²*Proceedings State Board of Equalization*, pp. 37-38, 58-59.

³*Idem*, p. 60.

⁴*Idem*, 1868, p. 81.

⁵*Idem*, 1869, pp. 37-39, 58-59.

⁶*Idem*, 1870, Oct. 7 to Oct. 27.

⁷*Journal of Senate*, 1871, vol. 1, p. 27, Governor's Message.

⁸*Proceedings State Board of Equalization*, 1872, p. 61.

and from the remark of Mr. Lippincott, it may be safely inferred that the Board of Equalization in its early period from 1867 to 1872 had a large influence upon the preparation of the present system of taxing corporations.

Three other facts might be noted in this connection. First, the New York Tax Commission of 1870 recommended the "corporate excess" method of assessing corporations.⁹ Second, Chairman Lippincott of the Board of Equalization, who was chief author of the revenue bill of 1871-1872, was in New York in the summer of 1870.¹⁰ Third, in a letter to Governor Palmer five days before the passage of the revenue law of 1872, Mr. Lippincott, urging the necessity of passing the new law, showed that under the laws then in force much intangible property was escaping taxation.¹¹

Since the revenue law of 1872 the Board of Equalization has had a prominent part in the taxation of corporations. The powers and duties of the Board were enlarged by adding to its equalizing duty that of assessing the intangible property of corporations. The capital stock of companies and associations organized under the laws of Illinois¹² is so valued by the Board as "to ascertain and determine respectively the fair cash value of the capital stock including the franchise over and above the assessed valuation of the tangible property." The excess in the value of the capital stock, including the franchise, over and above that of their tangible property, is known as the "corporate excess."

To assist the Board in this work, the law provides that all corporations that are subject to assessment by the Board shall in addition to the lists of personal property, "make out and deliver to the assessor a sworn statement of

⁹Jas. K. Edsall, brief to United States Supreme Court, State Railroad Tax Cases, II Otto 592 (1875).

¹⁰Report to General Assembly, 1871, vol. 4, page 85.

¹¹*Idem*, page 101.

¹²Not all; certain classes of corporations have been exempted from time to time; see chapter IV.

the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The assessed valuation of all its tangible property, such schedule to be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts."¹³

These statements are returned by the assessor to the county clerk, by him forwarded to the Auditor, and by him are turned over to the Board of Equalization. In case of Illinois telegraph companies, the data are collected in a slightly different way. Each company returns its statement directly to the Auditor, annually, in the month of May.¹⁴ The statements of the telegraph companies must, in addition to the information required of other corporations, contain information as to the length of lines operated in each county and the total in the state.¹⁵

There is, however, no means of enforcing the foregoing provisions. The law provides, that in all cases of failure or refusal of a corporation to make a sworn statement on the proper blank, and return it to the assessor, that the assessor shall make the return from the best information

¹³Revenue Law 1872, section 32.

¹⁴Revenue Law 1872, section 53.

¹⁵A foreign corporation that operates an Illinois corporation's line under lease, must make return for the Illinois line. *Postal Tel. Cable Co. vs. Barnard*, 37 Ill. App. 105 (1890).

which he can obtain.¹⁶ To get additional information and to supply deficiencies in regular returns, data may be secured by independent investigation of the Board.¹⁷

The rules by which the Board of Equalization assess the "corporate excess" are, according to the provisions of the law, left to the discretion of the Board, itself. The Supreme Court of Illinois in 1874 denied that the granting of power to the Board to adopt its own rules of assessment, was a delegation of legislative power, and sustained the validity of the provision in the revenue law, granting such power to the Board of Equalization.¹⁸ The discussion of the making of their rules, and also, of the constitutional and statutory¹⁹ limitations upon the character of the rules for assessing the "corporate excess", will be treated below in the history of the Board's administration.

After the Board of Equalization has assessed the amount of "corporate excess" to each corporation that is subject to its jurisdiction, its further duty consists in certifying the "excess" to the clerks of the counties in which the corporations are located, so that the "corporate excess" may be spread upon the tax roll along with the other property of the corporation.²⁰

A brief history of the Board's administration might easily occupy an extensive volume. In this study is included such portion only of its history as is needful for the exposition of its powers and jurisdiction, its difficulties in getting data, its rules for valuing the corporation as a

¹⁶Revenue Law 1872, section 32.

¹⁷Sup. Ct., *St. L. V. & T. H. R. R. Co. vs. Surrell*, 88 Ill. 535 (1878).

¹⁸*Porter vs. Rockford, Rock Island & St. Louis Railroad Co.*, 76 Ill. 563. (1875, Jan. term).

¹⁹Laws of Illinois, special session, 1898.

²⁰The Supreme Court has construed the tax on the "corporate excess" to be a personal property tax. *Quincy Bridge Co. vs. Adams County*, 88 Ill. 615 (1878); *Peter Saup et al vs. Morgan & Co.*, 108 Ill. 326 (1884); *Parsons et al vs. Gas Light & Coke Co.*, 108 Ill. 380 (1884); *The Hub vs. Hanberg*, 211 Ill. 43 (1904).

going concern, and its efficiency²¹ as an assessor of intangible property.

The Board had but little difficulty interpreting its new powers and duties. The law is plain in regard to the duties; but it leaves the Board wide discretionary powers as to the rules it shall use. It may be noted that the Chairman of the Board from 1873 to 1876 inclusive, was Auditor C. E. Lippincott, who had been on the Board from 1868 to 1873 and had had much to do with the framing of the new revenue law. One error was made at the first session. The Western Union Telegraph Company, a foreign corporation owning lines in the state, was assessed at the same time Illinois telegraph companies were assessed. And the Supreme Court, in January, 1874, held that the Board had exceeded its jurisdiction in trying to bring foreign corporations under the operation of the "corporate excess" method of taxing capital stock and franchise.²² The Court decided the question on the wording and intent of the statute, not on the economic merits of the question. Economic opinion was not called for.

In 1890 the Appellate Court decided that it is the duty of a foreign telegraph company operating under lease the line of a domestic corporation, to return to the Auditor the schedule or statement required by law.²³

In 1880 the Supreme Court held that where a corporation is formed under the laws of Illinois, by consolidation of other corporations, one of which is incorporated under the laws of this and the others of other states, the new company is to be considered as incorporated under the laws of this state within the meaning of the revenue law of 1872. And the capital stock located or used in this state, of such corporation, is subject to be assessed and taxed as such.²⁴

²¹Facts brought out in this chapter; deductions from these facts brought out in Chapters III and IV, are reserved for concluding chapter.

²²Western Union Telegraph Co. vs. Lieb, 76 Ill. 172 (1874).

²³Postal Telegraph Cable Co. vs. Barnard, 37 Ill. App. 105 (1890).

²⁴Ohio and Mississippi R. R. Co. vs. Weber, 96 Ill. 443 (1880).

In 1896 a similar decision was handed down in the case of a bridge company which was a consolidation of Illinois and Iowa corporations. The Supreme Court held that "all the capital stock of a corporation formed by consolidation of corporations of different states is properly taxable in one of the states, as the corporate existence springs from the legislature of the state and is to be regarded and treated by the authorities of the state as domiciled there."²⁵ Here again the decisions hinge not on economic but on legal considerations.

Reference is to be made now to a jurisdictional question that was brought up under economic considerations. In 1895 at the first day's session of the Board of Equalization for that year, Mr. Cullerton, a member from Cook County, introduced resolutions which averred that large amounts of capital stock were escaping taxation because the companies had a majority of their stock "merged" in foreign corporations; and which requested the Attorney General to render his opinion as to the Board's right to assess the capital stock or such a portion thereof as may be made up of the capital stock of any corporation which was organized under, and was doing business under, the laws of Illinois at the time of the consolidation and reorganization under the laws of another state.²⁶ But the resolutions were postponed and later were tabled by a vote of ten to eight.²⁷ The question does not appear again in the records of the Board. It is a question that the jurist might, if a case ever arose, quite likely decide in the negative, but which the economist might decide in the affirmative. The jurist has to decide, consistently with his previous rulings, that the franchise value follows the legal person to its domicile in the state which gave to it the legal character of a person; but the economist has to consider the question of where the franchise value does actually exist.

²⁵Keokuk & Hamilton Bridge Co. vs. People, 161 Ill. 132 (1896).

²⁶*Proceedings State Board of Equalization*, 1895, p. 2.

²⁷*Idem*, p. 4.

Next in order is the consideration of the difficulties of the Board in getting data for an accurate administration of its duties. The revenue law provides that the Auditor shall devise proper blanks for the statements of corporations relative to capital stock, funded debt, assessed tangible property, etc.²⁸ "Blank number five" is the one furnished. Each corporation is bound by the law to fill out this blank, affix its sworn subscription, and deliver it to the assessor, who returns it, by way of the county clerk and the Auditor, to the Board of Equalization. But from the very first, from 1873 down, the corporations have been negligent and reluctant about complying with the law. Some of this at first may have been due, as the Capital Stock Committee of the Board reported in 1877, to the ignorance of the corporations as to the real meaning of the law.²⁹ Many of the sworn statements which were returned, were defective. They erred especially in 1873 in reporting their funded debts too high thinking that that would decrease their assessments. The contrary affect resulted, since the Board considered the value of the bonds, as well as the stocks, in determining the valuation of the corporation's entire property. Later they often neglected and refused to supply this information in regard to debt, and also as to the market or actual value of their capital stock. And every annual report of the Board shows that many corporations do not report the valuation of their tangible property by the local assessors.

In case of the refusal of a corporation to make out and deliver the required statement to the assessor, it is his duty to fill out the blank the best he can and return it to the county clerk. But the local assessors have very often neglected thus to co-operate with the Board. The minutes of the Board's Proceedings frequently complain of such dereliction of duty.³⁰

²⁸Revenue Law, sec. 32. See above.

²⁹*Proceedings State Board of Equalization*, 1877, p. 63.

³⁰*Proceedings State Board of Equalization*, 1873, p. 150; 1870, p. 63; 1885, p. 77; 1891, p. 16; 1900, p. 17. This latter year a majority of the county clerks had failed to return corporation statements to the Board.

At its first session in 1873 the Board undertook to get the required data from the corporations by exercising its power "to examine persons and papers."³¹ A special committee armed with a list, furnished by the Secretary of State, of all the corporations which had been incorporated since 1865 went to Chicago to investigate. They sent out circulars to the corporations, enclosing "blank number five", asking them to fill it out and return it to the Committee, and also appointing hours for the hearings of corporations relative to the assessment of their capital stock. But most of the corporations declined either to appear or to fill out the blanks. A characteristic reply was that of the Chicago Chamber of Commerce. The President of that company contended that the \$450,000 difference between the value of the capital stock and the value of the tangible property was "an invisible value and therefore not properly taxable under the revenue law". Further, he declared that if the revenue law should be construed by the Board so as to make such "invisible value" taxable, the Chamber of Commerce would dispute in court if necessary the constitutionality of the revenue law.³² The next year, 1874,³³ the Board, upon request, was informed by the Attorney General that they were not empowered to compel attendance of corporations for examination, and, that if the corporation refused to comply with the law and the local assessors were not able to supply the required information, the Board had no recourse but to assess the corporation upon the information which it could obtain otherwise.³⁴ This opinion was later sustained by the Supreme Court.³⁵

³¹Revenue law, sec. 109.

³²*Proceedings State Board of Equalization*, 1873, p. 17. The Chamber of Commerce was assessed \$305,000 in 1873; \$306,800 in 1874; \$216,800 in 1875.

³³The constitutionality of the revenue law having been upheld by the Sup. Ct. of Ill.

³⁴*Proceedings State Board of Equalization*, 1874, p. 5.

³⁵St. Louis, Vandalia and Terre Haute Ry. Co. vs. Surrell, 88 Ill. 535 (1878).

The Attorney General further informed the Board that section 56 of the revenue law provided a penalty for any person or corporation which failed or refused to comply with the law requiring lists and statements. The section is as follows:

Sec. 56. If any person or corporation shall give a false or fraudulent list, schedule or statement, required by this act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a penalty of not less than \$10 nor more than \$2,000, to be recovered in any form of action, in the name of the People of the State of Illinois, on the complaint of any person. Such fine, when collected, to be paid into the county treasury.

But the fact that no action was ever brought by the Board under this section would lead to the suspicion that the Attorney General misconstrued the section. In fact in 1895 the Auditor of Public Accounts in his biennial report to the General Assembly, calls attention to the fact that there is no penalty provided for the refusal or neglect of corporations to return the statements required by section 32 of the revenue law.³⁶

One penalty, however, remained within the power of the Board to inflict, namely, that of assessing the non-complying corporations an arbitrary amount. But it is to be feared that the fact that corporations could refuse to supply data and not meet with severe assessment, in fact to slip out of it entirely, may largely account for the continued difficulty of the Board in getting the data.

The records of 1875, 1876, 1877, and 1884 show that the same policy was continued as at first, namely, to send out circulars and blanks to the corporations asking them to reply and inviting them to appear before the Board.³⁷ In 1877, 1878, 1879, and 1882 the records show that Investigating Committees "sat" in Chicago. (In 1894 a proposal to employ experts was tabled.³⁸) That some data were

³⁶*Reports to General Assembly, 1895, Auditor, page viii.*

³⁷*Proceedings State Board of Equalization, 1875, p. 6; 1876, p. 5; 1877, p. 13; 1884, p. 10.*

³⁸*Idem, 1894, p. 4. Dahlman's resolutions.*

gathered by replies to the Board's letters is evidenced by occasional minutes in the proceedings.³⁹ In 1885 it was seriously proposed by the Chairman of the Capital Stock Committee to draw up and to keep a record book of corporations which are subject to capital stock taxation. But the proposal was not adopted. In 1894 Mr. Hearn proposed to make it a rule of the Board that only sworn statements of corporations be accepted; and that in case of refusal of the corporation to make such statement, the Capital Stock Committee should assess from the best information obtainable. The resolution was referred to the Capital Stock Committee, which, strange to say, reported unfavorably upon it.

One almost irrelevant matter here begs admission. In 1874 Mr. Warner offered a resolution providing that "in the absence of reliable information as to the market or fair cash value of the capital stock and debt of any such companies and corporations, the fair cash value of the assessed tangible property may be taken as the value of the shares of such capital stock and debt." The resolution was not adopted. The next year it was again voted down. The explanation of Mr. Warner's motion may be inferred from the following facts: 1. Mr. Warner was a member of the Railroad Committee. 2. At that time the Capital Stock Committee was assessing "excess" to the railroads. 3. In 1877 Mr. Warner was chairman of the general rules committee at the time of the organizing of the new board. 4. The rules committee transferred the assessment of railroad capital stock from the Capital Stock Committee to the Railroad Committee. 5. The Railroad Committee's final report makes no pretense of having considered the value of capital stock and bonds of railroads.

Mention should be made also of the fact that the minutes of the Proceedings record letters from individuals, from a "Tax Payers' Association", from the Mayor of

³⁹*Proceedings State Board of Equalization*, 1875, p. 8; 1877, p. 19; 1882, p. 5.

Chicago, from the "Tax Investigating Committee" of the Chicago Teachers' Federation, and others, relative to the assessment of corporations. Many data no doubt have in that way been offered to the Board.

The following table, data for which are drawn from the tabulated reports of the Capital Stock Committee of the Board, speaks forcibly of the difficulties of the Board in gathering data.

TABLE I

Year	Number of companies that did not report cap. stock & debt as required by section 32	Number of companies that did not report the ass'd value of their tangible property	Number of companies to whom Board assessed "corporate excess"	Number of companies found by Board to have no value "over and above tangible property"
1873	<i>a</i>	<i>a</i>	207	13
1874	116	52	224	100
1875	67	90	100	143
1876	179 ^b	252	87	229
1877	2	4	33	301
1878	<i>a</i>	<i>a</i>	46	369
1879	14	6	40	370
1880	10	11	29	<i>a</i>
1881	<i>a</i>	14	61	<i>a</i>
1882	<i>a</i>	<i>a</i>	91	<i>a</i>
1883	<i>a</i>	<i>a</i>	85	<i>a</i>
1884	<i>a</i>	<i>a</i>	80	<i>a</i>
1885	27	28	114	<i>a</i>
1886	26	34	148	<i>a</i>
1887	42	59	217	<i>a</i>
1888	31	54	246	<i>a</i>
1889	86	93	284	12
1890	97	91	305	9
1891	103	105	313	11
1892	78	92	322	12
1893	70	71	237	4
1894	78	86	249	14
1895	69	82	252	22
1896	88	95	251	29

a Board gives no data.

b 25 no capital stock report, 154 no debt.

TABLE I—(Continued)

Year	Number of companies that did not report cap. stock & debt as required by section 32	Number of companies that did not report the ass'd value of their tangible property	Number of companies to whom Board assessed "corporate excess"	Number of companies found by Board to have no value "over and above tangible property"
1897	114	135	273	42
1898	109	124	236	84
1899	153	187	302	93
1900	138	143	266	68
1901	88	134	328	421
1902	1004	996	1988	763 ^c
1903	944	815	1520	1104 ^d
1904	497	963	1442	1502 ^e
1905	843	977	1218	1290
1906	246	978	1832	1024
1907	977	788	1302	1234
1908	872	777	1281	1117
1909	400	750	1168	1336
1910	1076	567	2153	287
1911	491	206	930	275

^c 1504 companies held to be exempt by law; see chapter IV.

^d 1801 companies held to be exempt.

^e 2585 companies held to be exempt.

After the matter of jurisdiction and of data, next in order is the examination of the rules by which the Board assesses the "corporate excess." The revenue law provides for rules as follows:

Section 3. . . . such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock (including the franchise) as to it may seem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject however, to such change, alteration or amendment as may be found from time to time to be necessary by said board. . . .

On September 10-12, 1873, the Board formulated and adopted the following rules:

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this State, and for the

assessment of the same or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz: First—the market or fair cash value of capital stock, and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses) shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second—From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations, (such equalized or assessed valuation being taken, in each case as the same may be determined by the equalization or assessment of property by this Board,) and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise which this Board is required by law to assess, respectively against companies and associations now or hereafter created under the laws of this State.

Expressed in every day language, the rules mean that the value of each corporation as a “going concern” is determined by adding together the market value of its capital stock and bonds. This computed value of the company as a “going concern” is then taken and held to be the same as the value of all of the corporation’s property both tangible and intangible.⁴⁰ Next the Board determines the equalized value of the tangible property as locally assessed. Then it subtracts the amount of this value of the tangible property from the amount of the value of both tangible and intangible property, and the remainder, if any, it holds to be the amount which it is required by law to assess—that is, “value of the capital stock, including the franchise, over and above the assessed value of the tangible property.”

⁴⁰This is an interesting feature of the rules, made necessary by the attempt of the legislature to adapt the old general property tax system to modern needs. The theory underlying the general property tax is, that the owning or control of property is the best index of a person’s ability to pay taxes. In the case of the corporation its ability to redeem bond coupons and to pay dividends, fixes on the market the valuation of its stock. Then by this rule the value of the capital stock and the bonds is used as an index of the value of the corporation’s property.

These rules were at once attacked in the courts of the State but were approved by the Supreme Court in its January term, 1875.⁴¹ And many times since then they have been reapproved.⁴² The next year the law was attacked by injunction process in the United States Circuit Court, which held the law unconstitutional. But in May, 1876, the Supreme Court of the United States reversed those decisions⁴³ and put its stamp of approval upon the Board's rules, quoted above, by declaring them to be "probably as fair as any." In the following chapter it will be seen how the Courts in their decisions have weighed the economic as well as the legal points in favor of the validity of the rules and the principles adopted by the Board.

At this point the opinion of economists is in order. Professor Seager, writing on the capital stock tax,⁴⁴ approves this method of valuation as follows:

The plan most commonly adopted is to tax the corporations themselves, while exempting their securities⁴⁵ in the hands of owners by a board of state assessors, deduction being allowed usually for real estate,⁴⁶ and sometimes for bonded and other indebtedness,⁴⁷ which in such cases usually escape taxation altogether. In its most highly developed and defensible form, it is a tax on the capital stock, whose value is determined by the prices at which its shares are selling *and* the bonded indebtedness. The aggregate value of the stock and bonds of a corporation represent its worth as a going concern from the point of view of the business community and constitute therefore the fairest basis for measuring its ability to contribute to the government, so long as property is accepted as the test of such ability.

One unwritten rule of the Board in assessing the "corporate excess" has been left out of the discussion so far. Stated baldly it is as follows: Each year the Board by resolution determines how much the local assessors of the

⁴¹Porter vs. R. R. I. & St. L. R. R. Co., 76 Ill. 561 (1875).

⁴²In 1875, 1876, 1877, 1878, 1880, 1901.

⁴³Details given in separate chapter.

⁴⁴*Introduction to Economics* (1906), page 556.

⁴⁵Stock exempt, but bonds not, by the law of Illinois (Sec. 32).

⁴⁶Also personalty by the law of Illinois.

⁴⁷Bonds are not exempt by the law of Illinois.

State, on an average, have undervalued property in returning its value. Then the Capital Stock Committee proceeds to undervalue the capital stock and bonds of corporations in the same proportion. Of course, such action is not a strict fulfilment of the requirements of the law which calls for the "fair cash value". Indeed, between fulfilling the letter of the revenue law which requires full valuation and fulfilling the fundamental principle of uniformity in the revenue article of the constitution, which necessitates a proportionate undervaluation, the situation of the Board of Equalization has been that of the proverbial man between the devil and the deep sea. The minutes of the Proceedings frequently show that conscientious members of the Board were opposed to this unwritten rule. In this they were supported by the unremitting hostility of the Attorney General to such a disregarding of their duty just because local assessors were disregarding theirs in the matter of valuation. And later, in 1887, the Supreme Court likewise sided with the strict constructionists. On the other hand, conscientious members of the Board held that the principles of uniformity, "fixed in this constitution", had claims to fulfilment prior to the claims of the letter of the revenue law. To support the rule they could cite decisions of the Supreme Court. The Capital Stock Committee in 1873 reported as follows:⁴⁸

The decision of the Supreme Court of this State heretofore made in Bureau County and in other cases, will compel the State Board in its assessments of property, to adopt as its basis for values the proportion of the actual value at which this Board finds other property to be assessed.

The case referred to by the Committee was heard by the Supreme Court in 1867. The Bureau County Board of Supervisors had assessed the C. B. & Q. R. R. Company's property at from one-third to one-half of its actual value regardless of the fact that other property was assessed by local assessors at only one-fifth to one-third its actual value. The Court held that the uniformity principle of the consti-

⁴⁸*Proceedings State Board of Equalization*, p. 18.

tution made the assessment by the Board of Supervisors invalid.⁴⁹

The Supreme Court in 1877 positively approved this unwritten rule. The validity of an assessment on an individual's property was attacked on the ground that the Board had not assessed corporations as the law required. But the Court held the action of the Board was proper, as obeying the constitutional mandate requiring uniformity rather than the literal terms of the statute; and that it could work no injustice, while "a strict observance of the statute in that respect would have worked injustice."⁵⁰

This decision would seem to make the unwritten rule vital to the validity of the operation of the Board's formally adopted written rules. Yet in 1887 when a case came up for hearing before the Supreme Court which hinged upon this very point of saving the uniformity principle by disregarding the law, the Court held opposite to what it did in the case just cited. The two cases are not identical; hence a brief statement is necessary.⁵¹ In 1886 a railroad corporation sought an injunction to restrain the collection of taxes on an assessment by the Board of Equalization. They alleged it to be illegal on the ground that the Board had assessed the property of the railroad at a trifle more than full value regardless of the fact that the local assessors had assessed property in the same township at only one-third of its full value. The Circuit Court denied the petition to enjoin and the railroad appealed to the Supreme Court. There its counsel contended that the Board "to preserve the principle of uniformity in the constitution" must assess corporation property at the same fraction of its value that local assessors assessed other property at. The Supreme Court denied the validity of such argument and affirmed the decision of the lower court. In part the Court said:

⁴⁹Board of Supervisors of Bureau Co. vs. C. B. & Q. R. R. Co., 44 Ill. 229 (1867).

⁵⁰Law vs. People, 87 Ill. 385 (1877).

⁵¹I. & St. L. R. R. and Coal Co. vs. Stookey, Collector, 122 Ill. 358 (1887).

If any wrong has been done, it was by the town assessors, and not by the State Board. The law required the State Board of Equalization to value the property at its fair cash value All this was done in substantial conformity with the requirements of the statute, yet the action of the Board is assailed . . . The appellant, in effect, says the Board should have disregarded this law because the town assessor had done so in the assessment of the other property in the two townships. This view of the matter we do not regard as sound.

But this decision seems to have been taken by the Board as a vindication of that one assessment of theirs on the railroad company that did the suing, rather than as a criticism of their use of the unwritten rule as to undervaluation. It is to be regretted that the counsel for the railroad company did not base his plea of unjust assessment on the ground that other corporations were undervalued while this particular corporation was not undervalued. That would probably have brought a more decisive opinion. In 1891 the question was up again in the Board, the strict constructionists as usual in the minority. The Attorney General was requested to give his opinion as to whether it was the duty of the Board to assess corporation property "at its fair cash value irrespective of the fact, if it is a fact, that all other classes of property in the State are assessed at a rate much less than their cash value."⁵² Two days later a counter resolution was passed asking the Attorney General whether the Board should equalize its assessments with those made by local assessors, "so that all classes of property throughout the State bear their equal proportion of taxes according to value."⁵³ The Attorney General replied that they must assess the full value and cited the Supreme Court opinion of 1887, which has just been quoted from above. But the reply of the Attorney General was not allowed to be presented⁵⁴ to the Board

⁵²*Proceedings State Board of Equalization*, 1891, p. 6, Aug. 25, Craske's resolution.

⁵³*Proceedings State Board of Equalization*, 1891, p. 7, Collior's resolutions.

⁵⁴*Idem*, p. 10, Sept. 2, Jones' motion to have Attorney General's letter read was lost.

until after the following resolution had been adopted by a vote of 14 to 6:

Resolved, That it is the sense of this Board that all property assessed in this State shall be so equalized that it shall pay its just and equal proportion of the burden of taxation.

In 1894 the question bobs up again in the minutes; the same fate is recorded. In 1898 at its special session for the revision of the revenue law, the general assembly put its stamp of approval upon this unwritten rule of the Board by providing that the Board in its assessments just as the local assessor in his should set the fair cash value down in one column to be headed "full value", and one-fifth part thereof in another column to be headed "assessed value."⁵⁵ Yet again in 1902 the Board "determined by resolution" that real and personal property had been valued no higher than 70 per cent. of its fair cash value. The inference is that the Capital Stock Committee undervalued capital stock and bonds of corporations in that same proportion before dividing by five to get the "assessed value". Otherwise the resolution as to the 70 per cent. valuation was of no use to the Board.⁵⁶ In 1905 this rule of "undervaluation" was at last incorporated in the written rules formally adopted by the Board.⁵⁷ Yet that did not down the question. In 1907 Mr. Colburn offered a resolution, to ask Attorney General Stead whether the Board had any authority to assess at 70 per cent. if it thought local assessors were so doing.⁵⁸

In closing on this point it is safe to affirm that, judging by the resolutions passed each year fixing the average rate at which property was estimated to have been assessed locally, also judging by the headings in the tabulated reports which expressly state that 40 per cent. or 50 per cent., as the case might be, is deducted from the fair cash value

⁵⁵Laws of Illinois, special session, 1898, p. 43.

⁵⁶Similar resolutions in 1903, 1905 and 1906.

⁵⁷*Proceedings State Board of Equalization*, 1905, p. 12.

⁵⁸*Idem*, 1907, p. 5, Sept. 24. On Oct. 8, Colburn withdrew the resolution.

“so as to equalize with other state property”, and judging by the later headings used in the reports from 1885 to 1898, “equalized value of capital stock and debt, etc.”, it is safe to affirm that the Board up to 1898 inclusive, used the unwritten supplement to its formally adopted rules. And the reports of the Board from 1898 to the present show compliance with the law of 1898 requiring one-fifth (in 1909 the proportion was fixed by statute at one-third) of the fair cash value to be set in a column and headed “assessed value”. But the minutes of the Proceedings relative to the resolutions determining that local assessors had valued property “no higher than 70 per cent. of its full value” (one-fifth or one-third of which is set down as “assessed value”), and the formal adoption of the rule in 1905, show that at present the Board, to “preserve the principle of uniformity” in taxation, has had to disregard the letter of the law even as amended in 1898. In fact, the United States Supreme Court, Oct. 21, 1907, held that a failure to do so was a violation of the Fourteenth Amendment.

A brief history of the Board's proceedings would not be complete without a review of the noted mandamus suit concerning the rules for assessing corporations, which was brought against the Board in 1900-1901 by the Teachers' Federation of Chicago.⁵⁹ The main points brought to issue were: 1. Could the Court compel the Board to assess certain (Chicago) corporations. 2. Could the Courts compel the Board to use the old rules rather than a new set adopted for the occasion. The following statement of the case is essentially that expressed by Justice Hand in rendering the opinion of the Supreme Court.

The case originated in a petition for mandamus, filed in the Circuit Court of Sangamon County⁶⁰ upon the relation of Catherine Goggin and Robert C. Steele, against the Board of Equalization and the members thereof (naming them), to coerce the Board and the members thereof,

⁵⁹Bd. of Eq. vs. The People ex rel Catharine Goggin et al. Opinion of Sup. Ct. filed Oct. 24, 1901. 191 Ill. 528.

⁶⁰In Nov., 1900.

forthwith to value and assess, in the manner provided by law, the capital stock, including the franchises, of twenty-three Cook County corporations, one a gas company, one a telephone, one an electric light company, and the rest street railway companies. It was alleged that the fair cash value of the capital stock, including franchises, over and above tangible property assessed to them, was \$235,000,000, and that the Board had failed and refused to value and assess, and were intending, as theretofore, to fail and refuse to value or assess the capital stock including the franchise, upon a fair cash value thereof, but intended to value and assess it in such manner as to cause said corporations, and each of them, to pay no capital stock tax.

The Board demurred to the petition's being heard. But the court overruled the demurrer and the suit proceeded, whereupon one of the members, Mr. Solomon Simon, filed answer confessing the alleged intentions. The rest of the members, severally, and jointly as a Board filed answer, claiming as follows: 1. That some of the corporations in question did not have property in Cook County as alleged on April 1, 1900. 2. That the Board of Equalization alone had jurisdiction in the matter of valuing and assessing capital stock of corporations. 3. That the Board had not refused to assess the said corporations, in that it had not yet completed its session. During the time between actions in court, the Board of Equalization on December 3, 1900, adjourned without having valued and assessed at any amount the capital stock and franchises of thirteen of the corporations in question. It did value seven of them at an amount so low, as is contended by the petitioners, as to amount, in law, to a fraudulent valuation and assessment, and therefore to no assessment at all. In arriving at the results they did, the Board had used a new set of rules. Their minutes for November 22, 1900, show that on motion of Mr. Cruttenden the established rules were abolished and new ones adopted, under operation of which capital stock was to be valued as an entirety, consideration to be given to the following: 1. Character and duration of franchise;

2. Franchise taxes or any other contribution paid to cities; 3. Highest and lowest quotations of stock and amounts of stock sold at those quotations; 4. Any other fact or condition that will assist. Thus it is evident that the bonds of the corporation were no longer to be considered in the valuation of the corporation. In the minutes for the same day it appears that the "courtesy of the Board" was extended to representatives of the corporations in question, who addressed the Board on the matter of assessing the capital stock of their corporations.

The trial court held that these new rules were not valid and that the Board should have used the established rules; also held the assessment under the new rules fraudulent. On May 1, 1901, the Circuit Court of Sangamon County rendered judgment against the Board, granting the writ of mandamus prayed for in case of the thirteen corporations not assessed and the seven held to be fraudulently assessed.

Appeal was taken by the Board to the Supreme Court and was heard at the October term. "The question was not whether the lower court had power to review the judgment of the State Board of Equalization but whether when property has been wrongfully omitted which is taxable, or fraudulently assessed at so low a rate as to amount, in law, to no assessment at all, the Court may compel said Board to perform its duty." The Sangamon County Court held that since the Board's power was that of original assessor, and not of review in the case of corporations, that the performance of the duty may be enforced by mandamus.

Justice Hand then reviews the evidence as to fraud in the assessment. Eighteen of the corporations, including the thirteen which were not assessed at all by the Board, did not make returns as directed by section 32 of the revenue law; whereupon the statements were made and returned by the assessors as required by law, and by the Auditor these were turned over to the Board of Equalization long before the petition for mandamus was filed. "Evidence shows" that the Tax Investigating Committee of the Chicago Teachers' Federation, had frequently point-

ed out to the Board, and especially to the Committee on Capital Stock, that the assessments for previous years had permitted the said corporations to escape taxation on their capital stock including the franchises. Further, it appeared from the evidence that the value of the capital stock of the thirteen companies which the Board had failed to assess in 1900 amounted to \$85,000,000; and that said companies, during the year prior to April 1, 1900, "earned a guaranteed dividend of from 6 to 36 per cent. per annum." And of the seven corporations which were assessed by the Board in 1900, the Peoples' Gas Light and Coke Company in a sworn statement of Nov. 17, 1900, had admitted property as follows:

1. Paid up capital stock.....	\$ 28,668,800
2. Funded debt	34,000,000
	<hr/>
Total.....	\$ 62,668,800
3. Assessed (full) value tangible property	15,526,785
	<hr/>
	5) \$ 47,142,015
	<hr/>
	\$ 9,428,403

Hence this property assessed according to the established rule would have had a taxable "corporate excess" amounting to \$9,428,403. But the Board had assessed it only \$450,000, by its new rules, or \$8,978,403 less than it should have assessed it. And this was not considering the fact that the company did not report the value of its stock at the actual market value, which was considerably higher. Justice Hand, reviewing the evidence, said this was a fair illustration of the Board's method with the other six. Such assessment the Court held to be fraudulent. Justice Hand settled the second issue at bar, namely whether the Courts could compel the Board to use the established rules rather than the new ones, by holding that since the Court had held that an assessment might be impeached for fraudulent

high assessment⁶¹ and that "valuation must be the result of honest judgment and not of mere will",⁶² the converse must be true, and "an assessment may be impeached where it has been fraudulently made at too low a rate." The appeal of the Board was accordingly denied and the lower court directed to issue the mandamus compelling the Board to assess the other twenty of the corporations in question by the established rules. The order was issued on November 6th. For some unknown reason the Capital Stock Committee did not comply with the order till November 20th. On that day the Committee was halted in its performance of the duty by a temporary injunction of the United States Circuit Court. But on the 22nd the Committee was allowed to finish the assessment. By this assessment the 1900 tax valuation of the corporations in question was raised about \$32,000,000.

The corporations themselves next took up the case. They refused in 1901 to pay the back taxes on the new 1900 assessment; brought suit in the United States Circuit Court after the supplementary assessments had been made; the collection of the tax on this assessment was in large part enjoined. Judge Peter S. Grosscup held that the supplementary assessment had been made under "duress", and was not on a proper basis. He decided that the assessment should be based on the capitalization of net earnings. And on this base the companies eventually paid taxes, on an additional assessment aggregating \$7,190,000 (The Illinois Court had ordered simply that the Board use the established rules and in so doing they had assessed the twenty companies an additional \$32,732,000). Including the taxes previously paid, the franchise corporations under discussion, for 1900 paid taxes on a total valuation of \$21,034,000. Judge Grosscup stated in his opinion that the valuation under his rule would approximate those made voluntarily by the Board in 1901; but he was twenty-five

⁶¹Pacific Hotel vs. Lieb, 83 Ill. 602 (1876).

⁶²C. B. & Q. R. R. Co. vs. Cole, 75 Ill. 594 (1874).

per cent. lower than what the companies paid the next year. Appeal was made by the State to the United States Supreme Court. October 21, 1907, the Court held that the injunction was valid. It was held that the State of Illinois through its Board of Equalization had not given the property of these corporations equal protection before the law. Other corporations had been assessed at one-fifth of 65 per cent. of their value; these at one-fifth of the full value. Such a denial of equality the Court held to be a violation of the Fourteenth Amendment.⁶³

A few other pertinent facts in the history of the Board's assessment of corporations may now claim admission to this article. They are drawn from the minutes of their published Proceedings and will be given in chronological order, and the reader may draw his own conclusions: I. Aug. 18, 1891, on motion of Mr. Craske, the secretary of the Board was instructed to prepare a tabulated statement of the capital stock and property of corporations that were subject to assessment by the Board, as shown by their sworn statements for the present year. II. Sept. 1, 1891, Mr. Craske moved to amend the rules relating to final committee reports so as to require the Railroad and Capital Stock Committee reports to be presented to the Board at least fourteen days before the adjournment sine die, and that those reports be open to alteration or amendment for ten days after presentation to the Board. Lost by vote of 3 to 12. Craske, Jones, Powers, for it. III. Sept. 15, on motion of Mr. Neff, Chairman of the Capital Stock Committee, the order of Aug. 18, was rescinded on the ground that it was impracticable.⁶⁴ IV. Oct. 3, 1892, Mr. Jones moved that the Capital Stock Committee make a special report on the assessment of the Pullman Company⁶⁵ showing the manner in which it arrived at the same. Lost by vote of 6 to 13. Craske, Jones, Powers, for

⁶³Raymond vs. (Chicago) Union Traction Co., 207 U. S. 20 (1907).

⁶⁴*Proceedings State Board of Equalization*, 1891, Sept. 15.

⁶⁵See Table VII.

it. Mr. Powers then moved that a day be fixed by the Capital Stock Committee for hearing other members of the Board relative to the Pullman Company's assessment. Withdrawn under agreement that such hearing would be granted.

V. Sept. 25, 1894, Governor Altgeld addressed the Board on the subject of the Pullman Company's assessment, presenting to the Board a written communication, together with exhibits relative to the value of the capital and the property of the company subject to taxation in Illinois. Referred to Capital Stock Committee.⁶⁶

VI. Oct. 23, 1901 (day before mandamus decision was handed down). Petition and list presented by a committee of the Chicago City Council received and referred to the Committee on Capital Stock. VII. Nov. 12, 1901, communication from Mayor Harrison requesting permission of the Board to allow a committee from the Chicago City Council to examine the report of the Capital Stock Committee. Laid on the table. VIII. Dec. 4, 1901, Board addressed by the general counsel of the Northwestern Railroad Company relative to assessment of the capital stock and franchise of corporations.

IX. Nov. 7, 1906, motion to revise rules so as to have Railroad and Capital Stock Committee reports lie on the table 10 days for inspection. Lost. X. Dec. 7, 1906, communication from J. Hamilton Lewis, Chicago Corporation Counsel, asking to be permitted to appear before the Board sitting as a Committee of the Whole on the assessment of Pullman and other Chicago corporations; also criticising the Board for not replying to his previous letters and for notifying three corporations of Chicago of hearings before the Board and not notifying him or the Attorney General's office.

These facts are to be kept in mind when later is considered the matter of the Board's efficiency as an assessor of corporations.

⁶⁶See Table VII.

The tabulated reports of the Capital Stock Committee of the Board are often lacking in data which a student of the inner workings of the process of taxing corporations would like to examine. The following facts are shown at times in the reports. For convenience they are numbered so as to be more easily worked into a tabulated form.

1. Name of the corporation.

2. Location; county and town or city.

3. Capital stock paid up.

3a. Asterisks used to denote the fact that certain companies did not make sworn statement as required by section 32 of revenue law.

3b. No asterisks but a row of dots, indicating probably that such statements, if made, were defective.

4. Total indebtedness, except for current expenses.

4a. and 4b., similar to 3a and 3b.

5. Market or actual value of paid up capital stock and debt as determined by the Board.

6. Capital stock and debt as equalized with the aggregate assessment of the state.

6a. Also indicating the per cent. of deduction made.

7. Total equalized value of tangible property assessed where located.

7a. Asterisks indicating no report of tangible property by certain companies.

7b. No asterisks but a row of dots, indicating probably that such statements, if made, were defective.

8. "Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property."

9. A separate list of the companies examined and found to have no "excess" over equalized tangible property assessment.

9a. Same facts shown by blank space in column for data number 8.

9b. Otherwise indicated.

10. Separate list of the companies examined and

found under the law to be exempt from "corporate excess" assessment.

10a. Same facts suggested by blank spaces in columns 5, 6, 6a, 7, and 8; e.g., 1875.

TABLE II

Year.....	1,	2,	3,	3a,	3b,	4,	4a,	4b,	5,	6,	6a,	7,	7a,	7b,	8,	9,	9a,	9b,	10,	10a
1873.....	1,	2,	...	...	...	...	...	...	...	...	...	...	...	...	8,	...	...	9b,	...	...
1874.....	1,	2,	3,	...	3b,	4,	...	4b,	5,	6,	6a,	7,	...	7b,	8,	...	9a,	...	...	...
1875.....	1,	2,	3,	...	3b,	4,	...	4b,	5,	6,	6a,	7,	...	7b,	8,	...	9a,	...	...	10a
1876.....	1,	2,	3,	...	3b,	4,	...	4b,	5,	6,	6a,	7,	...	7b,	8,	...	9a,	...	...	10a
1877.....	1,	2,	...	...	3b,	...	...	...	5,	6,	6a,	7,	...	7b,	8,	9,	...	...	...	...
1878.....	1,	2,	...	...	...	...	...	...	...	...	...	...	...	...	8,	9,	...	...	...	...
1879.....	1,	2,	...	...	3b,	...	...	...	5,	6,	6a,	7,	...	7b,	8,	9,	...	...	...	...
1880.....	1,	2,	...	...	3b,	...	...	...	5,	6,	6a,	7,	...	7b,	8,	...	...	...	...	...
1881.....	1,	2,	...	...	...	...	...	...	5,	6,	6a,	7,	7a,	...	8,	...	...	...	...	...
1882.....	1,	2,	...	...	...	...	...	...	...	...	...	...	...	...	8,	...	...	...	...	...
1883.....	1,	2,	...	...	...	...	...	...	...	...	...	...	...	...	8,	...	...	...	...	...
1884.....	1,	2,	...	...	...	...	...	...	...	...	...	...	...	...	8,	...	...	...	...	...
1885.....	1,	2,	3,	3a,	...	...	...	...	6,	...	7,	7a,	...	8,	...	...	...	...	...	...
1886.....	1,	2,	3,	3a,	3b,	...	...	...	6,	...	7,	7a,	...	8,	...	9a,	...	...	...	...
1887.....	1,	2,	3,	3a,	3b,	...	...	...	6,	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1888.....	1,	2,	3,	3a,	...	...	...	...	6,	...	7,	7a,	7b,	8,	...	...	...	...	...	...
1889.....	1,	2,	3,	3a,	...	...	...	...	6,	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1890.....	1,	2,	3,	3a,	...	...	...	...	6,	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1891.....	1,	2,	3,	3a,	...	...	...	...	6,	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1892.....	1,	2,	3,	3a,	3b,	...	...	...	6,	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1893.....	1,	2,	3,	...	3b,	...	...	...	...	...	7,	...	7b,	8,	...	9a,	...	...	...	...
1894.....	1,	2,	3,	3a,	3b,	...	...	...	...	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1895.....	1,	2,	3,	3a,	3b,	...	...	...	...	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1896.....	1,	2,	3,	3a,	3b,	...	...	...	...	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1897.....	1,	2,	3,	3a,	3b,	...	...	...	...	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1898.....	1,	2,	3,	3a,	3b,	...	...	...	...	...	7,	7a,	7b,	8,	...	9a,	...	...	...	...
1899.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	...	9a,	...	...	...
1900.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	...	9a,	...	...	...
1901.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	...	9a,	...	...	...
1902.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	10,	...
1903.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	10,	...
1904.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	...	...
1905.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	...	...
1906.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	...	...
1907.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	...	...
1908.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	...	...
1909.....	1,	2,	3,	3a,	3b,	...	...	...	5,	6,	6a,	7,	7a,	7b,	8,	9,	...	...	...	...
1910.....	1,	2,	3,	6 ⁷ ,	3b,	...	...	...	5,	6,	6a,	7,	...	7b,	8,	9,	...	...	...	...
1911.....	1,	2,	3,	...	3b,	...	...	...	5,	6,	6a,	7,	...	7b,	8,	9,	...	...	...	...

⁶⁷In the year 1910 the Board of Equalization began to tabulate corporations in three schedules instead of two. Schedule A contains those corporations which made their returns as provided by law. Schedule B contains those that failed to comply with the law requiring returns. Schedule C contains the names of those which were found to be fully assessed by the local assessors, i. e., the Board deemed the value of capital stock and franchise and tangible property to be no more than the value assessed to the tangible property by the local assessor.

From the table given on the preceding page may be readily discovered what data were given to the Board, and what not given, in any year. It shows also how the reports of the Board have varied from time to time. For example, by consulting column "3a" it is seen that in 1885 the Board began to mark certain companies with an asterisk to indicate that they did not report their capital stock. Column "3b" shows that in many years there were reports which were defective. Again, a glance horizontally at the data furnished in the Board's published proceedings as shown in the table for the years 1882, 1883 and 1884, discloses the fact that the Board in those years reported nothing but the name, location and assessment of the corporations.

From the meager data afforded in some reports, it is small wonder that members of the Board who were not on the Capital Stock Committee should, as shown above, have tried to get the reports laid over for several days. The rules of the Board have always provided that the Capital Stock Committee's report shall lie on the table at least two days. But the suspension of the rule has been more honored than the rule. Since 1890 at only five sessions has the report lain over the whole two days. In 1891-1893, 1896, 1897, 1900-1904, 1906-1908 the rules were suspended and the report adopted as reported. In all the years once only was the report amended. That was in 1890 when \$285,000 was cut off the assessment on the Union Stock Yards because a like amount had been assessed to the Stock Yards Company by the Railroad Committee on account of the company's railroad tracks.

If the Capital Stock Committee had each year published definite information as to the corporations whose statements required by law, were lacking, or defective, and also the names of the assessors and county clerks who had failed to do their duty in the matter, as explained above, it would have been possible for other members of the Board and for outsiders interested in the matter of taxing corporations, to assist the Capital Stock Committee in overcoming the difficulties in regard to getting proper data.

Further, if the Committee had shown definitely in its tabulated reports the actual data as to the full valuation set against each corporation, and the actual deductions made in such valuation, considerable adverse criticism, especially that shown above as coming from within the Board itself, might have been avoided. Further, the study of the Board's history seems to warrant a logical conclusion that the Capital Stock Committee always has the situation under control. It does its work practically as a closed body but under cover of a diffused responsibility. And here is the place to state the fact that the Board is responsible to no one but the people. The people cannot center the responsibility for the Board's action upon any state officer. When they elect the Board it is at the general election where partisan policies are uppermost, and where at best the people inquire only into the record of the state officers. The Board of Equalization is forgotten.

The general conclusion as to the efficiency of the Board of Equalization as an assessor of corporations is reserved for the last chapter.

CHAPTER III.

COLLECTION OF CORPORATION TAXES:

“CORPORATE EXCESS” SYSTEM TESTED IN COURTS.

The collection of corporation taxes, with the exception of those from telegraph and railroad companies, is the same as from other general property taxpayers. The law provides that the local assessor shall value and assess the tangible property of the corporation, and that the assessment of “corporate excess” shall be certified by the Auditor, under direction of the Board of Equalization, to the county clerk of the county in which the corporation is located. The county clerk then extends the taxes for all purposes on that amount the same as upon the other property of the town, district, village or city in which the corporation is located.¹ Thus all the property of a corporation becomes subject to the state, county, town, district and municipal rates. It pays its general property tax to the regular collector of such taxes. However, in the case of telegraph companies, the law provides that the Board of Equalization shall distribute the “corporate excess” among the counties the same as “railroad track” and “rolling stock” valuations are distributed, that is, by giving each county such a percentage of the total “excess” as its number of miles of telegraph lines is a percentage of the total number of miles in all the counties where the company does business.² Further, the law provides that the tax shall be collected by the county collector³ the same as railroad taxes are collected. However, the taxes on wires, poles, buildings, office furniture, etc., are collected by the local collectors.

¹Revenue Law, section 108.

²*Proceedings State Board of Equalization*, 1873, p. 157.

³Revenue law, section 54.

The collection of the general property tax, levied on corporations as result of the new method instituted in 1873 for reaching intangible property, was at the start resisted in both the State and United States Courts. The constitutionality of the "corporate excess" method was tested in the State Supreme Court in 1875 and in the United States Supreme Court in 1876. Since then the attack has been upon the legality or validity of the assessments by the State Board of Equalization.

The favorite resort, at law, to resist the collection of taxes on the "corporate excess" and attacking this system in general, has been the use or attempted use of court injunctions. As pointed out by Justice Miller of the United States Supreme Court, this method, because of the long drawn out litigation involved, is detrimental to the interests of the state, but profitable to the corporation.⁴ The state often badly needs the tax money tied up by the litigation. The corporation has the "tied up" sum to use in business.

From the biennial report of the Auditor of State for the years 1873 and 1874 it is learned that the collection of the tax extended against the assessed value of the capital stock of corporations was resisted in the courts by nearly all the railroads in the state, and by many other corporations. A series of cases known as the "Tax Injunction Cases", involving all the questions at issue, were heard and decided at the January term (1875) of the Supreme Court. The Court, in the opinions which were filed on the 19th of June, 1875, sustained the constitutionality of the revenue law of March 30, 1872, and the validity of the action of the Board of Equalization under it in all particulars, except that of the assessment of the Western Union Telegraph Company, a foreign corporation.⁵

But in the meantime or immediately after these opinions were made public, many of these corporations, (including nearly all the railroads in

⁴Tax Injunction Cases of U. S. Circuit Court Illinois reviewed by Supreme Court in 1876. State Railroad Tax Cases, II Otto 585 ff.

⁵Porter vs. R. R. I. & St. L. R. R. Co. 76 Ill. 561. (1875).

the state,) procured in the Courts of the United States injunctions against the collection of the tax against their capital stock. It follows that but a small percentage of the tax levied in 1873 upon the capital stock of corporations has been collected.⁶

In fact, the United States Circuit Court in April, 1875, declared the revenue law of 1872 to be unconstitutional and issued permanent injunctions against the collection of the tax on the capital stock "excess". Three railroad injunction cases were by the State carried to the Supreme Court of the United States, where, in a notable opinion delivered by Justice Miller in May, 1876, the injunction was ordered to be dissolved. The Court ordered further that "it is essential that every case be brought within some of the recognized rules of equity jurisdiction and that neither illegality nor irregularity in the proceedings, nor error, nor excess in the valuation, nor hardship or injustice of the law, provided it be constitutional, nor any grievance which can be remedied by a suit at law, either before or after the payment of the tax,—will authorize the issue of an injunction against its collection." All this was on the ground that the maintenance of the state must not be threatened by long drawn out litigation that withholds tax money from the treasury to the detriment of the state (and profit of the corporation). In stating the general cases in which injunctions might be issued the Justice approved the rules laid down by the Illinois Supreme Court in 1864,⁷ namely, that "a court of equity should not enjoin collection of taxes except where the tax is unauthorized by law, or assessed on property not liable, where injury irreparable would be done, or a multiplicity of cases would occur." Further, the United States Supreme Court held that no injunction, preliminary or final, can be granted to stay collection of taxes until it is shown that all taxes conceded to be due, or which the Court can see ought to be paid, or which can be shown to be due by affi-

⁶Auditor of Public Accounts, *Reports to General Assembly*, vol. I, p. 106.

⁷*Cook County vs. C. B. & Q. R. R. Co.*, 35 Ill. 465 (1864).

avits, have been paid, or tendered without demanding a receipt in full.⁸

Further, the lower United States courts were instructed to follow the construction of the Illinois statutes that was placed upon them by the Illinois Supreme Court.

A summary of what was held in the opinions of the State and United States Supreme Courts of 1875 and 1876 in sustaining the constitutionality of the revenue law will show the issues that were raised and settled in regard to the constitutionality of the "corporate excess" method of taxing corporations. In following this discussion, reference should be made to the exact wording of the constitution, which has been given in chapter I. The main points of the Illinois Supreme Court decision in 1875 were as follows:

1. The legislature has plenary power to tax as restricted by the constitution of the state and the laws and constitution of the United States.⁹

2. Article IX, Section I, of the constitution does not require that the legislature, in providing for the taxation of corporations, shall designate the precise amount which each corporation shall pay, and that this shall be the same on each corporation, without regard to the franchise value or the privileges enjoyed, nor that such taxation shall be of like character with that which may be imposed on innkeepers and others pursuing the particular vocations named. This part of the constitution only requires that the tax upon corporations shall be by general law, and the only uniformity is as to the class of corporation.

3. The mode of taxing corporations is discretionary with the legislature.

4. The assessment of property may be given to different officers.

⁸State Railroad Tax Cases, II Otto 585 (1876).

⁹Limitations in regard to taxing of capital stock of national banks (See chapter IV); also in regard to levying taxes which may be construed to be infringement of federal power to regulate commerce.

5. The power given to the State Board of Equalization is not a delegation of legislative power.

6. The legal property of a corporation is distinct from that of the individuals who make up the corporation. This was brought out by the plea of the corporation counsel that the corporation as a person did not own any capital stock, but that that belonged to the individual shareholders, and was properly taxable to them only. But the Court denied such argument and held that the corporation was properly taxable upon its capital stock including the franchise.¹⁰ The Court especially noted the fact that the franchise privilege of doing business under corporate organization with limited liability was a valuable privilege and justly taxable. Further, the Court held that the franchise is property and the fact is not lessened by reason of the difficulties attaching to the matter of making a just valuation of it. On this point Cooley says: "A state may tax the franchise or the capital of a corporation by such rule as it may prescribe, even though it be arbitrary."¹¹

Before the United States Supreme Court R. G. Ingersol, counsel for the appellees, argued as follows: The Constitution of Illinois places the property of corporations and individuals upon an equality. By the revenue law of 1872 corporations are denied privileges and rights accorded to individuals and hence the law is unconstitutional. The Court denied the validity of the argument. In the second case,¹² corporation counsel insisted that the assessments of the Board of Equalization under the new law were prohibited by the Fourteenth Amendment to the constitution. But the Court considered that argument as scarcely worth a reply, and declared in denial of all argument that the revenue law of March 30, 1872, violated neither the Constitution of Illinois nor of the United States.

¹⁰Citing opinion of U. S. Supreme Court, *Van Allen vs. The Assessors*, 3 Wallace 583 (1865).

¹¹Cooley cites United States Supreme Court decisions, *Minot vs. Philadelphia, etc. R. R. Co.*, 18 Wallace 206 (1873).

¹²There were three cases heard at the same sitting.

In the second place, in connection with the argument as to the unconstitutionality of the revenue law, the Board's interpretation of the law and the legality of its acts under such interpretation was also attacked. The courts decided that "capital stock" in the revenue law means not "shares of stock" either separately or in the aggregate, but all the property of the corporation, including the franchise as property. The courts also sustained the action of the Board in considering funded debt as within the meaning of the term "capital stock." Secondly, they sustained the rules adopted by the Board for the valuing of the "capital stock" thus broadened by construction. As expressed by Justice Miller the Court decided that "a rule which ascertains the value of all this by ascertaining the value of the funded debt and of the shares of the capital stock, as the basis of assessment, is probably as fair as any other" and that the method of deducting the value of the tangible property to find the "excess" is as good as any other, all modes being more or less imperfect. Minor points settled by the court at that time and since are as follows:

1. The Board is not bound to assess capital stock at what its officers report¹³ but may value it upon their own knowledge and individual judgment.¹⁴

2. Although a corporation's return for assessment is to be made on blanks furnished from the proper office, the return must be made though the furnishing of the blanks has been neglected.¹⁵

3. Held that the absence of the company's statement as to capital stock is no bar to the action of the Board.¹⁵

4. Held that the validity of the assessment is not affected by the fact that the Board did not give notice to the corporation to appear. Board not required by law to do that.

¹³Republic Life Ins. Co. vs. Pollak, 75 Ill. 292 (1874); reaffirmed in 1876, 1878, 1887, 1890.

¹⁴Quincy Railroad Bridge Co. vs. County of Adams, 88 Ill. 615 (1878).

¹⁵Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1876)

5. Held that the fact that shares are worthless does not impeach the assessment; the creditors, that is the bond holders, take the place of the stockholders.¹⁵ Even if the corporation is in the hands of a receiver its capital stock and bonds are taxable.¹⁶

6. Held that assessments by the Capital Stock Committee of the Board are valid acts of the Board.

7. Its assessment can be impeached for fraud only.¹⁷

Thus it appears that the constitutionality of the "corporate excess" method has been sustained in every particular by the courts, and the work of the Board of Equalization has been kept remarkably free from legal obstructions. In fact the Board has been strikingly well sustained.

¹⁵Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1876).

¹⁶People vs. Ward, 105 Ill. 620 (1883).

¹⁷Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1876).

CHAPTER IV.

METHODS OF ASSESSMENT OF CORPORATIONS EXEMPT FROM "CORPORATE EXCESS" METHOD

Part 1. *Foreign Corporations, in General.*

There are certain classes of corporations that do business in Illinois which are exempt from the "corporate excess" methods of assessment. First to be considered are foreign corporations, in general. They are not amenable to this method because the revenue law includes within its provisions only those corporations "created by or organized under the laws of this State." And, as already noted, the Supreme Court in 1875 for this reason enjoined the collection of the taxes on the "corporate excess" of a foreign telegraph company.

But Illinois corporations which are owned or controlled by foreign corporations are still amenable to the law as long as they keep their Illinois franchise; although such a company might be exempt under special provisions of the law as other corporations of its special class are, as, for example, printing companies. In 1890 the Appellate Court held that it was the duty of a foreign telegraph company operating under lease the telegraph line of a domestic corporation to return to the Auditor the schedule or statement required by the revenue law of 1872. This was in strict construction of section 53 which provides that "any person, company or corporation, using or operating a telegraph line in this State, shall, annually, in the month of May return to the Auditor of Public Accounts a schedule or statement", as set forth in Chapter II. But the tax is paid not on the capital stock of the foreign holding or leasing corporation. It is paid on the capital stock of the leased or owned Illinois corporation.

The tangible property of foreign corporations is taxed

the same way that the property of like domestic corporations is taxed, (with the exception of insurance companies, the treatment of which is left for chapter five.)

Fees and license taxes of foreign companies necessarily differ somewhat from those levied on domestic corporations. Legally the franchise tax "to be or become", as Professor Seligman calls the incorporation fee, cannot be levied except by the State which creates the corporation. But the same thing is achieved in Illinois by a general law that requires each foreign corporation except banking, insurance and homestead loan associations,¹ to pay such a proportion of the incorporation fees charged to like Illinois corporations as its capital to be used in Illinois is a proportion of its total capital.

But the most valuable franchise of the foreign corporation, namely, "to do or act", that is, to extend its business, its organization, its credit and so forth, is not taxable under the present Illinois laws.

Part 2. *Banking Corporations.*

All banking corporations in Illinois are exempt from the "corporate excess" method of assessment. This exemption has applied to national banks and to State banks organized under the general banking laws, since 1872. But only since 1893 have banks organized under special laws been exempt from assessment by the Board of Equalization.

National banks are exempt from all state and local taxes upon the capital stock in the aggregate, by law of Congress.² This was done to encourage the investment of capital in United States bonds, the law being a measure passed in war time. It has not been construed as forbidding the taxation of bank shares to the stockholder. The Supreme Court of the United States in 1865 held that "a

¹Special laws apply to insurance and homestead loan companies; see Chapter V.

²Act of Congress 1864, 41st section.

tax on the shares of stock is not a tax on the bank", that is, on its capital stock, which was the point at issue.³

The act of Congress in 1864 made it necessary for the legislature of Illinois to revise the bank taxes of the State. It is of interest to note that in 1857 Illinois had taken a decisive step in the taxing of corporations directly upon their capital stock by passing a law taxing banks and banking corporations in that way. This law was repealed, however, by an act of the legislature in special session in June, 1867. Seeking to prevent the escape of the capital stock shares from taxation, the legislature provided for a collection of taxes on the shares "at the source"—"the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein in the county, town or district where such banks or banking association is located, and not elsewhere, whether such stockholders reside in such town, county or district, or not." Provision was made that the value of the capital invested in real estate, which was taxable as real estate, should be deducted from the aggregate value of the capital stock before the value of each share was assessed to the stockholders. Each bank was required to keep in its office, subject to inspection of the tax officers, at all times, a full and correct list of the names of, and residences of, and number of shares held by, its several stockholders. Further, each bank was required to retain so much of the dividends belonging to the stockholders as would be necessary to pay the general property taxes levied on the shares of stock, until it should be made to appear that the taxes were paid, the tax collector even having authority to sell the shares of those who refused to pay the tax.

This law was attacked in 1870 by a Mr. Dows of New York City, who carried a case to the United States Supreme Court asking that the collection of the taxes on a State bank in Chicago be enjoined on the ground that the

³U. S. Supreme Court, *Van Allen vs. The Assessors*, 3 Wallace 383 (1865).

tax was illegal in that the situs of his shares of stock was at his New York residence. But the petition was denied. In 1871 and 1872 the United States Circuit Court did enjoin the collection of taxes on national bank shares, but the United States Supreme Court in 1874 dissolved the injunction and affirmed the validity of the law.⁴ The case came up under the provisions of the revenue law of 1872, which, however, were, for national and state banks, the same essentially as those of the law of 1867. At one or two points the law was changed. No deduction was allowed for the value of capital invested in real estate, in determining the value of shares of stock in state banks. (National banks by law can hold no such investments.). But in 1903 such provision for deduction was restored to the revenue law.⁵ Further, the law of 1872, section 35, provides that the shares of stock of national banks in other states held by stockholders in this state shall not be required to be listed under the provisions of this act. They would otherwise be listed under the provision for scheduling personal property.

As to tangible property, the revenue law of 1872 exempts national banks from the rules laid down in section 30 for the listing of the property and business of banks; but section 13 provides that in all cases where assessment is not specifically provided for, the personal property shall be assessed where the business is carried on.

The law of 1867 operated upon state banking corporations the same as upon national banks. The capital stock tax for the year 1867 was, by an emergency clause in the act, made void and the provision for taxing shares of stock to the stockholders put into immediate effect. How well this change worked may not be proved but may be strongly suggested by one or two statements. First, one of the first acts of the Board of Equalization in 1867 was to investigate the assessment of bank stock. The Com-

⁴Merchants Nat'l Bank vs. Tappan, 19 Wallace 501 (1874).

⁵Laws, 1903, p. 294.

mittee on Personal Property reported that such shares of stock were assessed all the way from full value down to one-sixth of full value; further that out of a total of \$11,500,000 of such capital in the State only \$2,000,000 was assessed to the stockholders. Second, two years later in the Constitutional Convention it was proposed to put a clause in the constitution commanding the legislature to tax "the actual paid up capital of any banking association in the same manner as other property", that is, to return to the law of 1857. In the debate, Mr. Forman said:

I imagine it is well known to every gentleman upon the floor that nearly all the banking capital of the State is now exempt from taxation. I am inclined to think the only way to subject it to taxation is by placing some such section as this in the constitution.⁶

But the clause did not go in. It was left to the discretion of the general assembly. And in 1872 when the general revenue law was enacted state banks, organized under the general banking laws, were not made amenable to but made exempt from the operation of the capital stock tax by the "corporate excess" method, and the law of 1867 in regard to taxing the shares in the hands of stockholders was retained as section 35 of the revenue law. Later, in 1893, the law was amended so as to exempt also state banks that were organized under special laws. But by a mistake in not completing the revision, the law left such bank stock not only exempt from assessment by the Board of Equalization but by the local assessors as well. This was pointed out by the State Auditor in 1895 in a lengthy report to the general assembly. Briefly the case may be stated as follows. Section 35 as shown above, provides that national bank shares of stock and the stock of banks organized under "the banking laws of this State", shall be taxed to the stockholders. But the stock of banks enjoying special charters could not be brought under that section because of a certain clause in section 3 of the same law. In that section, the law, up to 1905, provided as follows:

⁶*Debates and Proceedings of Constitutional Convention*, p. 1685.

Provided, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of stock of any such company or association shall not be assessed or taxed in this state.⁷ This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this state.

Commenting upon this the Auditor said: "It will be observed that the clause first above quoted exempts the shares of stock of banks organized under special charter from assessment and taxation." If the case had been tried out in the courts no doubt such stock would have been found to be assessable by the local assessor, for the courts have always held to a very rigid construction of the exemption clauses in the revenue article of the constitution. And no semblance of an exemption of property of such a sort is provided for in the constitution. However, the legislature in 1905 remedied the defect by including banks organized under special laws within the provision of the last clause, or sentence, of the revenue law quoted above.

Of course strictly according to the definition of corporation taxes, the tax on bank shares is not a corporation tax, but is a tax rather upon the property of the owners of the stock. But if the Illinois method of "collection at the source" is properly enforced it amounts to the same thing. It was evidently so intended, else why the exception of bank corporations alone in 1872, from the assessment by the Board of Equalization. One possible reason for such exception is not that the capital stock should not be taxed to the banking corporation, but simply that both state and national banking corporations should be taxed by the same method.

In regard to the tangible property taxes of state banks little space is accorded in this study, as it is a subject for treatment under the general property tax rather than under corporation taxes. The revenue law provides as follows:

Sec. 30. Every bank (other than a national bank),

⁷This clause, no doubt, was intended for the shares of such corporations only as were assessed by the Board of Equalization; for it is a proviso to the section that gives such power to the Board.

banker, broker or stockjobber, shall at the time fixed by this act for listing personal property, make out and furnish the assessor a sworn statement showing:

First—The amount of money on hand or in transit.⁸

Second—The amount of funds in the hands of other banks, bankers, brokers or others, subject to draft.

Third—The amount of checks or other cash items, the amount thereof not being included in either of the preceding items.

Fourth—The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.

Fifth—The amount of bonds and stocks of every kind and shares of capital stock of jointstock or other companies or corporations, held as investment or any other representing assets.

Sixth—All other property appertaining to said business, other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this act).

Seventh—The amount of all deposits made with them by other parties.

Eighth—The amount of all accounts payable, other than current deposit accounts.

Ninth—The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item.

Thus it would appear that banking corporations are not necessarily favored by their exemption from the assessment by the Board of Equalization; for the corporation which is assessed by the Board is assessed upon such part of its capital stock value only as is not covered by the assessed value of the tangible property, but the banking capital is taxed in the form of money and credits and in addition the dividends are levied upon to pay the shareholder's tax on the shares if any do not pay up.

In the actual assessment of bank shares the same laxness prevailed for a long time as exists in the local assessment of all other personal property. The Illinois Bureau of Labor Statistics in 1894 in its study on taxation, page 32, gives a list of the valuations of bank shares which are

⁸Down to 1894 greenbacks were held to be untaxable; Congress in that year made them taxable.

listed in 55 counties in 1893. (45 counties reported no such property.) Cook county with a population of 1,191,922 reported state and national bank shares to the amount of \$357,353; while the other 54 counties with a population of 1,643,298 reported \$3,347,411. Cook county reported \$.30 to a person; the other counties reported \$2.03 to the person of national and state banking stock shares. Further, it is shown as computed from commercial statements,⁹ that the values of Cook County bank stock of the kind mentioned was not \$357,353 but was \$56,394,350. Conceding that bank stock is entitled to the same undervaluation as other personalty was enjoying at the time or about 80 per cent. (the Bureau of Labor Statistics makes no such concession but in fairness it must be made) —conceding this, the capital stock shares of Cook county for 1894 should have been at least \$11,278,870, which is \$10,121,517 more than what was actually reported. Again, the Bureau gives a table for eighteen state and eighteen national banks of Cook county whose assessment in 1893 after being equalized by the Board of Equalization amounted to only \$7,744,903; while the commercial value was \$59,732,600. An 80 per cent. deduction from that leaves \$10,946,540, or an undervaluation of \$3,201,437 on the property of the thirty-six banks.

A Report on the Taxation and Revenue System of Illinois prepared for the Special Tax Commission of 1910, shows the recent results of the assessment of bank shares to be somewhat different from that shown by the report of the Bureau of Labor Statistics in 1894. This report states:

In comparison with the assessments of other bonds and stocks, the assessment of shares of stock in the State and national banks appears to be relatively high, and shows a noticeable increase during the past ten years. Special provisions of the law apply to the assessments of banks. Before 1901, all State and private banks were required to submit detailed statements of their moneys, bills receivable, deposits, etc., while the shares of national banks were assessable under the general provisions of the revenue law. Under legislation of 1901 and 1903, however, shares of incorporated State and national banks are now assessed where the bank

⁹Of March 5, 1895.

is located, and collected by the banks from dividends due the stockholders. The value of the shares is determined by deducting from the value of all the shares of capital stock the assessed value of real estate owned by the bank in the county where the bank is located.

The assessment of bank shares shows a marked decline from 1873 to 1898; and a notable increase in 1899 at the time the rule for one-fifth valuations went into effect. In 1901 under the new law for the assessment of shares of state banks, the assessed valuation increased about five times that for 1900; but in 1902 this dropped to about the figures for 1900. Since then there has been a considerable increase,¹⁰ and with the change to the rule of one-third valuations, in 1909, another marked increase to \$44,216,278.

Complaints have been made to the Special Tax Commission, that bank shares are assessed higher in proportion to their value than real estate or other property. On the other hand, the Illinois Tax Reform Association has claimed that the assessment of bank shares in Cook County is inequitable, and discriminates in favor of certain banks.¹¹

Part 3. *Business Corporations Exempt by Special Provisions*

Besides all foreign corporations and all banking corporations of the State, there are several other classes of corporations which are exempt from the "corporate excess" method of assessment. These are "companies or associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for printing, or for the publishing of newspapers, or for the mining and sale of coal, or the improving and breeding of stock",¹² and homestead loan associations.¹³ Such exemption has been for the encouragement of capitalistic development of the resources of the State. The financial history of many other states would show that this idea of lessening the tax burden to invite capital, is a common idea. From the following summary it may be seen that

¹⁰In 1908, Bank Shares in Cook County were assessed at \$16,099,200, and for the entire state at \$22,698,445.

¹¹John A. Fairlie, *A Report on the Taxation and Revenue System of Illinois*, 1910, pp. 50-51.

¹²Exempt by law of 1872, as amended in 1879, 1893, 1905.

¹³Exempt by law of 1879 as amended in 1887, 1891, 1895.

many states go further than Illinois by exempting certain corporations from any general taxes whatever.¹⁴

Alabama. Cotton and woolen manufactures, five years. Laws 1893, chap. 383. Manufacturers with \$50,000 invested, ten years. Laws 1897, chap 378.

Arizona. \$300,000 beet-sugar plant, nine years. Revised statutes, 1901, sections 4062-4067. Canaigre manufacturers, ten years. Laws of 1895, chap. 77. Irrigating canals and reservoirs, fifteen years. Laws 1899, chap. 15. Railroads, ten years. Laws 1899, chap. 68. Water storage for generating electricity, nine years. Laws 1903, chap. 27.

California. Fruit and nut trees, and grape vines, four and three years respectively. Constitution, article XIII, sec. 12 $\frac{3}{4}$, amendment adopted Nov. 6, 1894.

Idaho. Mining claims not patented, irrigating ditches, and water rights if water is not sold or rented, no time limit. Laws 1903, page 73.

Louisiana. (Exemption from parochial and municipal taxation) Capital, machinery, and property employed in mining and the following enterprises: textile fabrics, yarns, rope, cordage, leather, shoes, harness, saddlery, hats, clothing, flour, machinery, articles of tin, copper and sheet iron, agricultural implements, furniture and other articles of wood, marble or stone, soap, stationeries, ink and paper, boatbuilding, fertilizers and chemicals, providing five hands or more are employed in each factory, ten years from January 1, 1900. Constitution of 1898, section 230.

Exemption from all taxation: railroads begun after May 12, 1898, and completed before January 1, 1904, (if not aided by local divisions), ten years from completion. *Idem*.

Mississippi. Manufacturing enterprises, ten years. Laws 1896, chap. 64.

New Mexico. Manufacturing enterprises, six years. Laws, 1897, chap. twenty-four. Tanning factories, six years. Laws, 1899, chap. 15.

New Hampshire. Manufacturing enterprises may be exempted by vote of town, for ten years. Statutes, 1901, page 204.

Oklahoma. Cotton manufacturers, ten years. Laws, 1899, chap. 18.

Rhode Island. Same as New Hampshire. Laws, 1899, chap. 18.

South Carolina. By vote of city or town manufacturing enterprises, mines and quarries may be exempted for five years from all but school taxes. Constitution of 1895, article VIII, sec. 8.

Utah. Portland cement manufacturers, five years. Laws, 1890, chap. eighteen.

Vermont. Manufacturing enterprises, mines and quarries may be exempted for ten years by vote of town. Laws, 1898, chap. 14.

¹⁴From "Encouragement to Industry by Exemption from Taxation" by John Burton Phillips, in the *Quar. Jour. Econ.*, Nov.-Dec., 1904.

Wisconsin. Zinc manufacturers three years.

Wyoming. Beet-sugar factories, ten years. Revised statutes, 1899, section 1762.

Even if the legislature thought it advisable to exempt any such Illinois corporations from all taxes on their general property, as it has indeed in times past exempted them from taxes on their capital stock, it would be illegal to do so under our present constitution. It was proposed in the constitutional convention of 1870," that for the purpose of encouraging manufacturers in this State, there ought to be a clause in the constitution exempting all manufacturing companies from taxation by all laws of this State, for the term of five years after the adoption of the constitution by the people."¹⁵ On the other hand there was a proposal to put a clause in the constitution prohibiting the legislature from exempting any corporation from taxation.¹⁶ Neither proposal actually found its way into the constitution, although the latter practically did so. The constitution on exemptions is as follows:

Article IX, section 3. The property of the State, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemptions shall be only by general law. . . .

It may be of interest to follow the historical development of the exemption of capital stock of certain corporations from the "corporate excess" method of assessment by the Board of Equalization. The first general assembly at its regular session in 1871 investigated the matter of taxing manufacturers. Fifteen hundred circular letters were sent out to the manufacturers asking each to state the amount of his or its capital stock, and output of goods; further, to state how the personal property tax bore on his business as compared with other branches of trade;

¹⁵*Debates and Proceedings of Constitutional Convention*, p. 199, Jan. 5, 1870.

¹⁶*Idem*, p. 221, Jan. 19, 1870.

and to state what changes he would suggest in the mode of assessment. Only one hundred and thirty-four replies, or about one out of eight, were received. Capital to the amount of \$14,000,000, and output of goods to the amount of \$23,000,000 were reported. Many refused to reply because they did not wish to make known their capital stock. The Committee, however, recommended... "...Of this great interest, yet in its infancy,...it becomes us as representatives...to see to it that no laws are passed which shall be oppressive...and that every encouragement be given to manufacturers, so that capital may flow into the State." But nothing came of this recommendation. On the contrary, at its special session in 1872 this same assembly enacted the revenue law providing for the "corporate excess" system and did not exempt manufacturing companies from assessment thereunder.

In 1875 the legislature amended the law relative to the assessment of corporations by the Board of Equalization so that

In assessing companies and associations organized for purely manufacturing purposes, or for printing, or for publishing of newspapers, or for the improving and breeding of stock, the assessment shall be so made that such companies and associations so organized shall only be assessed as individuals under like circumstances would be assessed, and no more; and such companies shall be allowed the same deductions as are allowed to individuals.

Dispute at once arose in the Board of Equalization as to whether the amendment was intended to exempt such companies from their jurisdiction. A motion to that effect was indefinitely postponed, and later at the end of the session a motion to strike all such companies from the report of the Capital Stock Committee was lost. Seventy-four companies, the names of which would indicate that they were organized for the purposes mentioned in the amendment, were listed in the report. Some of them were assessed and some were not even valued. In 1876 the Board's report shows again the same evident difference as to the interpretation of the amendment. In 1879 the

legislature revised the wording of the amendment so as to put the assessment of those corporations organized for the above named purposes distinctly in the hands of the local assessors.¹⁷ The Attorney General being asked by the Board to give his opinion, interpreted the law to mean that since certain banks had in 1872 been exempted from the jurisdiction of the Board, so now these classes of corporations were properly exempted. There could be no question as to validity of the law.¹⁸ The local assessors would, he argued, be required to assess the capital stock as well as the other personal property and the real estate.¹⁹ A majority of the Capital Stock Committee in an elaborate argument attempted to show that the Attorney General was mistaken in his construction of the law, especially in regard to the local assessor's power of assessing the capital stock of a corporation. He might assess the shares of stock held by the stockholders, but not the capital stock of the corporation, for no provision was made in the revenue law for anyone to assess capital stock in the aggregate, except the Board of Equalization. But the Board for once overruled its Capital Stock Committee and voted not to assess such corporations.

In 1893 companies organized for the purpose of mining and selling coal were included in this exemption from assessment by the Board of Equalization by another amendment to the revenue law of 1872. In 1903 a committee from the Illinois Manufacturers' Association appeared before the Board with the plea that mercantile corporations not being exempt from assessment on capital stock by the Board, were greatly handicapped; further that simply because mercantile corporations were unknown in 1879, was the only

¹⁷Laws of Illinois, 1879, p. 251.

¹⁸Held valid later by Sup. Ct., *Coal Run Co. vs. Patrick Finlen*, 124 Ill., 66 (1888), and in other cases.

¹⁹Attorney General Jas. K. Edsall, letter, in *Proceedings of State Board of Equalization*, 1879, p. 6.

reason why at that time such corporations had not been included in the amendment to the law; further that there is a fundamental difference between public service corporations and mercantile corporations;²⁰ further that to tax mercantile corporations on capital stock and not to tax the capital of unincorporated mercantile houses and foreign corporations doing such business, was an unjust discrimination and would retard the commercial growth of the State. Of course the Board could give no relief. But in 1905 the legislature granted them the supposed relief by again amending the revenue law of 1872.²¹ The law went even further than to amend sections 3, 32, and 108 so as to exclude the capital stock of corporations organized "for purely manufacturing or mercantile purposes, etc.", from the assessment of capital by the Board of Equalization, and also amended section 1 of the revenue law so as to expressly exempt such capital stock from any assessment whatever. The act became law without the signature of the Governor. This latest phase of tax exemption of capital stock has recently been passed upon by the Supreme Court. A coal mining company in 1907 was assessed on its capital stock by a local assessor. It resisted collection of the tax as being illegal under the terms of section 1 of the revenue law amended as above indicated. But the Supreme Court held that the constitution gives the legislature no power to exempt property of that kind.²² It has repeatedly held that it is constitutional for the legislature to provide (1) that the Board of Equalization shall assess the capital stock of certain classes of corporations, and (2) that it shall not assess the capital stock of certain other classes of corporations. And now this latest decision puts the assessment of the capital stock in the hands of the local assessor. It is his duty to assess the capital stock and franchise value of any corporation

²⁰See Ely, *Outlines of Economics*, p. 647, on this point.

²¹Laws of Illinois, 1905, p. 355.

²²Cons. Coal Co., Appellant, vs. Miller et al, 236 Ill., 149 (1908).

which by reason of the fact that its charter makes it a "purely manufacturing or mercantile, printing, publishing, coal-mining or stockbreeding" concern, is exempt from the jurisdiction of the Board of Equalization. Thus the contention of Attorney General Edsall in 1879 finds judicial recognition in 1908. That from 1879 to 1908 these corporations, because exempt from the "corporate excess" method of assessing capital stock, had been considered to be taxable on tangible property only, is evidenced by the facts and theories which we have seen brought before the Board by the agents of the mercantile associations. Further, the Auditor of Public Accounts in 1895, commenting upon this very point, said:

By this clause a large amount of dividend-paying capital which is invested in various enterprises throughout the State is freed from the burden of taxation, while the small holdings of the toiling masses whose labor makes the investment of such capital profitable are not allowed to escape the eye of the assessor. I would recommend this clause be repealed or greatly modified.²³

The legislature, as we have seen, did not repeal nor modify, but instead added to the exemption. And now though the latest decision of the Supreme Court does modify it radically, yet the practical difficulties remain. They are those that were pointed out by the Capital Stock Committee in 1879 when they demurred to the opinion of Attorney General Edsall. The legislature has not provided the assessor with power to get statements from these corporations relative to their capital stock, debt and so forth. Further, the local assessor in order to determine whether he or the Board of Equalization is to assess the capital stock of a corporation, must see the charter or articles of incorporation. For the Supreme Court has held that not the business which a corporation can be seen to be doing, but the "purpose for which it was organized" as shown by its charter, is the test of whether any given corporation is or is not to be assessed by the Board.²⁴ A reference to

²³Auditor's Report to Gen. Assembly, 1895, page viii.

²⁴Distilling & Cattle Feeding Co. vs. People, 161 Ill. 101 (1896).

the pages of the Board's reports will show that many companies are assessed whose titles might suggest that they were corporations of the exempted classes. On the other hand certain corporations which we would expect to find on the list are absent, as for example, Swift & Co., Armour & Co., and many others. The character of the charter rather than the character of the business done by the corporation, has been the deciding test. Common observation of the everyday facts in regard to the ultra vires business done by corporations, is enough to convince anyone that to decide the method of taxing a going concern solely by the wording of a charter which may be outgrown, which may be only on the face of it "purely manufacturing or mercantile, etc.", is to say the least, a poor rule to use.

It is not possible from the present available information to make even an estimate of the extent to which, from 1879 to the present, capital invested in such enterprises as these has been exempt from taxation on capital stock. Not even the number of corporations doing business in the State during a given year may be learned from the government archives. In 1901 a law was passed requiring annual reports from all corporations, but it is not enforced. To 1909 the records of the Secretary of State show that 70,000 corporations have been chartered in this state.²⁵ The Board of Equalization in 1902, 1903, and 1904, published in their Proceedings a tabulated list of all those corporations which they found to be exempt from their jurisdiction. There were 1504, 1801 and 2585 respectively in the three years. In 1903 the Board also tabulated each one's authorized capital stock. The total for 1801 companies is no less than \$283,006,680. This is the par value only. It is safe to assume that those companies whose stock was above par more than offset those whose stock was below par. And the total sum of capital that was not taxed under the "corporate excess" method in that year no doubt would be enormously larger if we might know what the capital stock

²⁵Letter from Secretary of State, April 23, 1909.

was of the great number of corporations that did not report at all to the Board. If only one-fourth of the corporations that have been chartered in this State are still doing business, there must have been ten thousand corporations in 1903 which might have been added to the list of 1801 published by the Board. In the following table are some of the corporations that appear on the list.

N. Y. Biscuit Co.....	\$10,000,000
N. K. Fairbanks Co.....	2,000,000
Todd Cotton Harvester Co.....	2,000,000
Spring Valley Coal Co.....	2,500,000
U. S. Sugar Refining Co.....	2,000,000
Western Electric Co.....	15,000,000
American Biscuit & Mfg. Co.....	10,000,000
Chicago, Milwaukee, Inland Lake Traction Co.....	50,000
Mathews Humane Stock Trans. Co.....	2,000,000
Lyon Cypress Lumber Co.....	2,000,000
Inland Steel Co.....	2,000,000
Illinois Steel Co.....	5,000,000
Gottfried Brewing Co.....	1,000,000
Chicago Western Elevated R. R. Co.....	5,000,000

The above corporations were not taxed a penny on their capital stock. But laundry companies, livery companies, paving companies, restaurant companies, teaming companies and many others to the total number of 1104 were taxed on their capital stock. It must be apparent to the reader that the present laws which exempt certain classes of corporations from the "corporate excess" method of assessment have produced a situation of gross inequality among corporations of practically the same classes. And it would appear that the larger corporations have an advantage over many of the smaller ones.

A more defensible case remains to be discussed. In 1879 the general assembly enacted a general act for the incorporation of homestead loan associations on the co-operative plan. Until 1891 these were assessed by the Board of Equalization. But in 1887 and in 1891 the law

was amended²⁶ so as to exempt their stock from taxation.²⁷ In 1891 the Board of Equalization began to omit the assessment of their capital stock. But the Supreme Court in 1894 declared the exemption to be unconstitutional²⁸ and the legislature made another attempt to accomplish the desired end in 1895. Instead of distinctly exempting homestead loan stock shares, they revised the method of listing and valuing such stock in a way that practically leaves the capital stock exempt. Sections 27, 28, and 29 of the revenue law of 1872 make provision for the listing of credits; to these sections the legislature added sections 29a, 29b, 29c, and 29d. The sections are as follows:

29a. The stockholders of every mutual building, loan and homestead association for the purpose of building homesteads and loaning money to the members thereof only, whether such association is organized under the laws of this state or of any other state or territory of the United States, shall list for taxation with the local assessor where such stockholders reside, the number of shares of stock of such association owned by each of them respectively and the value thereof on the first day of April in each year, and the same shall be assessed against such stockholders and the taxes thereon collected in the same manner as on other personal property.

29b. The shares of stock of all stockholders residing without this State of such associations shall be assessed by the local assessors where such associations are located, and, for the purpose of collecting taxes thereon, a lien is hereby created upon such stock.

29c. In determining the value of such stock for the purpose of taxation the value of the real estate owned by such association shall be first deducted from their assets and such real estate shall be assessed in the manner now provided by law.

29d. The shares of stock and property of every such mutual building, loan and homestead association shall be assessed as herein provided and not otherwise.

This is the law at present. In 1901 the following

²⁶Laws of Illinois, 1887, p. 131; laws of Illinois, 1891, p. 89.

²⁷"and all money paid to such corporation, being at once loaned out and placed into taxable property, and the shares of stock and notes provided for in this act, being simply evidence as to where such money has been placed, therefore such stock and notes shall not be subject to taxation."

²⁸People's Loan & Homestead Ass'n vs. Keith, 153 Ill., 609 (1894).—"The notes and mortgages are credits belonging to the corporation."

proviso was annexed: "Provided that no stock of such association while loaned upon by and pledged as security to the association issuing it, to an amount equal to the par value of such stock, shall be subject to assessment." But the Supreme Court held this was unconstitutional.²⁹

In 1902 the Board of Review of St. Clair County assessed the notes and mortgages of the St. Louis Loan & Investment Co. The company appealed to the Auditor, who as required by section 78 of the revenue law of 1872, certified the facts to the Supreme Court. It was held by the Court that the law of 1895 was valid; and "where this method has been followed the Board of Review has no power to also assess notes and mortgages taken by the association for loans",²⁹ because the real estate was taxed, and in determining the value of the capital stock, pursuant to assessing each share's value to the stockholders, only real estate was deducted; and hence loans and mortgages were included in the value of the shares. As the Supreme Court has construed the law, it appears that all the home-stead loan corporations pays is a tax on its real estate. Its other property, which consists of capital stock, notes and mortgages, is taxed to the individual shareholders, in the form of a tax upon shares of capital stock.

²⁹In re St. Louis Loan & Investment Co., 194 Ill. 609 (1902).

CHAPTER V.

LICENSE AND EXAMINATION FEES AND "RECIPROCAL TAXES".

In addition to the taxes on property locally assessed and on the capital stock assessments by the State Board of Equalization, some revenue is received from organization and examination fees on corporations, and from fees and special taxes on insurance companies.

Part 1. *Corporation Fees.*

Before 1870, such registration and incorporation fees as were collected from corporations were retained by the Secretary of State or (after 1848) the Auditor of State. The Constitution of 1870, however, provided that all fees payable to any of the executive officers should be paid into the State treasury. The revenue law of 1872 authorized the Secretary of State to make the following charges:

Granting license.....	\$1.00
Filing articles of association, incorporation or consolidation..	\$1.00
Issuing certificate	\$1.00

With these small fees, the revenue was not important, reaching a maximum of \$33,587.68 for the period 1890-92.

In 1893 a general incorporation fee of \$25 was imposed; and the revenue from corporation fees during the next biennial period more than doubled (to \$74,054.02). In his report for 1894, the Secretary of State recommended that the incorporation fee should vary with the amount of capital stock; and the general assembly of 1895 passed an act establishing a sliding scale of charges, which is still in force.

The general law for the organization of corporations (except homestead loan associations, religious associations or corporations, and corporations not for pecuniary profit)

provides that the following fees shall be paid to the Secretary of State as incorporation fees:

If capital stock is \$2500 or less.....	\$25.00
If capital stock is between \$2500 and \$5000.....	50.00
For each additional \$1000 of capital stock over \$5000.....	1.00
For the certificate of complete incorporation.....	1.00
For an increase of capital stock, for each \$1000.....	1.00

Thus for example the fee to the state for a million dollar corporation is \$1,046. An increase of capital stock of \$100,000 would cost another \$101.¹

In addition to the fees from Illinois corporations, the law requires companies organized in other States (except banking, homestead loan, insurance, and railroad and telegraph companies whose lines had been built in Illinois previous to 1899) to pay the same fees as if they had organized under the laws of Illinois, upon such a proportion of their capital stock as is represented by their property in the state. The fee is determined by the Secretary of State by a consideration of the sworn statement required of the corporation as to the proportion of its capital stock that is to be represented in Illinois by its property and business. For example if a New Jersey corporation with a capital stock of a million dollars aims to use one-tenth of its capital in Illinois, it must pay a fee equal to one-tenth of the \$1046 fee above computed for a million dollar Illinois corporation. In 1907-1908, the Secretary of State collected \$78,421.86.

Corporations not for pecuniary profit pay an organization fee of \$10, and \$1 for certificate with seal. Homestead loan associations, in addition, pay a \$2 fee for filing their annual reports with the Auditor, also the expenses and compensation of the Auditor or his deputy for examination at least once a year. Foreign corporations of this kind at the time they file application for the privilege of doing business in the State must pay \$50, and also \$25 for the certificate of authority and \$25 for its annual renewal.

¹Hurd's Revised Statutes, 1908, p. 1076.

They must also pay to the Auditor or his deputy, "his reasonable compensation and expenses" as fees for the examination of the business.²

State banks are required to pay the bank examiner \$10.00 per day and 25 cents mileage, and also \$5.00 for filing the quarterly report. Savings banks pay an organization fee of \$5.00; and, if their funds exceed \$100,000, their proportionate assessment to maintain the state banking department.

Such license and examination fees are collected automatically when the permits, licenses or certificates are issued. The increased corporation fees imposed in 1895 brought a considerable revenue to the state; and at the same time are said to have acted to prevent the incorporation of fraudulent concerns. For the biennial period 1894-6, the collections were \$178,464.62, considerably more than twice that for the preceding two years. For 1896-8, the collections again more than doubled, to \$388,529.26; and for 1898-1900 increased to \$625,425.79. Since then the changes have been more gradual; and for the biennial period 1906-08, the collections from corporation fees were \$815,425.89. This amount compares favorably with the revenue from organization fees from corporations in other States. But it is small in comparison with the revenue of a number of the eastern states from special taxes levied annually on corporations, based on capital stock, earnings or dividends. Moreover, the assessment of capital stock of Illinois corporations by the State Board of Equalization is not of sufficient amount to produce any large revenue either for the state or local authorities.

Part 2. *Insurance Companies: Net Receipts and "Reciprocal" Taxes.*

Domestic insurance companies for pecuniary profit as has been shown are taxed the same as other corporations,

²Hurd's Revised Statutes, 1908, pp. 549, 553; Laws of Illinois, 1893, p. 86; 1903, p. 129.

on their tangible property and their "corporate excess". Fraternal benefit societies and societies operating on the assessment plan and mutual fire companies, have no capital stock to be taxed. Sec. 13 of the revenue law provides that

the personal property of...insurance companies... and companies not specially provided for in this act, shall be listed and assessed in the county, town, city, village or district where their business is carried on, except such property as shall be liable to assessment elsewhere in the hands of agents.

This means that insurance companies like individuals must, in compliance with section 25 of the revenue law, list for local assessment all safes, office furniture, and other such property, all bonds and stocks, shares of stock of foreign corporations, money and credits, and franchises. However an exception is to be noted in the case of domestic life insurance companies. In 1905 section 13 of the revenue law was amended as follows:

In computing the taxable property of life insurance companies organized under the laws of this State, the value of the real property on which the company pays taxes shall be deducted from its net admitted assets above liabilities, as testified and shown by the latest report of the Insurance Superintendent, and the remainder shall be the amount of the personal property for which the company shall be assessed.

It was provided that this law should not apply to fraternal companies. The writer is of the opinion that the above amendment, whether just and politic or not, is clearly unconstitutional; for in deducting liabilities it provides for an exemption of property from taxation that is not authorized in the constitution. In fact an exemption which on its face seems far more justifiable, has recently been declared invalid upon the ground that it was an exemption that the constitution of Illinois makes no provision for. At the same time that the above amendment was passed, the general assembly also amended section 2 of the revenue law, which is the section that exempts certain kinds of property, by adding to the section an additional clause, as follows:

Eleventh—All the money collected and on hand within this State of every kind and nature of fraternal beneficiary societies and the subordinate lodges thereof, which are organized and exist or admitted to do

business under the laws of the State of Illinois, and used exclusively for the purposes of such societies and not for profit.

The next year the Board of Review of Effingham County refused to allow the exemption of such property owned by the Supreme Lodge of the Modern Fraternal Order. The Order appealed to the Auditor, who as the law requires, certified the facts of the case to the Supreme Court. That body decided that the amendment, clause "Eleventh" to section 2 of the revenue law, is unconstitutional. If these fraternal societies were "for charitable purposes"³ the constitution would permit the legislature to exempt their property from taxation; but the Court held that a benefit society was not a charitable institution within the meaning of the constitution, for its contracts of insurance are based upon valuable considerations and are legal and enforceable by law.⁴ In a case reviewed by the Supreme Court in 1902, the Court held that the fact that orders had been drawn upon a benefit fund prior to April 1st to pay beneficiaries of deceased members, does not exempt the benefit fund from taxation even to the extent of such orders, if no part of the orders have actually been paid.⁵ If these liabilities of a fraternal society against its benefit fund are not deductible from its money and credits at assessing time, how can the law of 1905 be justified which provides that the old line life company shall deduct its liabilities (which of course include claims unpaid) from its assets in listing its personal property?

In the last chapter, in discussing the efficiency of the State Board of Equalization, it is shown that under the present division of assessment between the local assessors and the State Board, domestic insurance companies are not well assessed for the general property tax.

³See wording of Constitution.

⁴Sup. Lodge Mod. Am. Fraternal Order vs. Bd. Rev., 223 Ill. 54, (1906).

⁵State Council of Catholic Knights of Illinois vs. Board of Review of Effingham County, 198 Ill., 441 (1902).

Insurance companies do not pay the same fees for incorporation as do business corporations in general; but each class of insurance company is required to pay fees provided for in the act under which it seeks to do business. The State receives a large revenue from these fees connected with the incorporation and regulation of insurance companies, both from the old line companies and from the assessment companies.

In 1869 the insurance laws were revised and a complicated scheme of license taxes was imposed. Life insurance companies were distinguished from fire, marine and inland navigation insurance companies. Since 1870 there has been passed a good deal of additional legislation imposing license fees, at varying rates, on different classes of insurance companies—such as local and mutual companies (1872, 1877 and 1887), beneficial and fraternal societies (1883 and 1893), tornado companies (1889), and accident, surety and casualty companies (1899 and 1905). By act of 1909 fire insurance companies are required to pay, in addition to taxes previously imposed, not exceeding one-fourth of one per cent of their gross premium receipts, as a fund for the maintenance of the office of state fire marshal.

For convenience and comparison the fees required of foreign companies of the same class as domestic companies doing business in this State are included in the following statement of existing license fees on insurance companies.

Fire, marine and inland navigation companies of Illinois pay an incorporation fee of \$30; foreign companies of the same kind paying a like sum for filing their declaration and charter; and for the examination of and appraisal of the securities that they put up with the insurance department, foreign companies pay the expense; for certificate of authority to agents, Illinois companies pay \$.50, foreign, \$2; for filing annual statements both domestic and foreign companies pay \$10; for filing copy of papers, per folio \$.20 and for affixing seal to the same \$1; for examination of company's financial condition whenever the Super-

intendent of Insurance deems it necessary, the company must pay the expenses.

Surety companies, casualty companies, and mutual burglary and casualty companies pay the same fees, except that the latter pay \$30 for the fee for filing the annual report instead of \$10; also a license tax of two per cent. on gross premium receipts.⁶

County fire (mutual) companies pay an incorporation fee of \$10 and annual fee of \$1 for filing a statement as required by law. Township fire and lighting (mutual), mutual wind, cyclone and tornado, and farmers' county mutual live stock companies each pay an incorporation fee of \$10 and \$1 for an annual renewal of certificate to continue business.

Life insurance companies pay an incorporation fee of \$30; foreign companies paying an admission fee of the same amount, must also pay a fee of three cents on each \$1000 of valuation of policies underwritten by them; for certificate both domestic and foreign companies pay \$2; for filing copy of papers, per folio \$.20, and \$1 for sealing same and certifying it; for certificate of securities deposited with the Auditor, a fee of \$.50; and \$.25 for attaching such certificate to the policy; also to pay the expenses incurred by the department of insurance in examining any company's financial condition. The same fees are paid by accident life companies, except that there is no provision for the registration of securities (the \$.50 and \$.25 fees above). Life and accident companies doing business on the assessment plan pay \$20 fees, instead of \$30, to start business; other fees are as above. Fraternal life and accident societies pay \$5 for certificate of authority to do insurance business of that kind; but foreign companies of like kind pay \$10. In 1905 a law was passed providing for mutual companies against loss to members in consequence

⁶The Insurance Superintendent under date of March 23, 1909, writes that no companies of the latter kind are doing business in Illinois; and that this two per cent. tax is obviously as invalid as the two per cent tax of 1899.

of accident to employees. These companies are left outside the regular jurisdiction of the Insurance Department; but foreign companies are required to pay an admission fee of \$100.

In the taxation of foreign insurance companies, Illinois taxes not only corporations but also joint-stock companies, partnerships and individual insurers, by the same laws. The right to do this was sustained by the United States Supreme Court in deciding a case brought to it by the Liverpool Insurance Company of England, appealing from the decision of the Massachusetts courts.⁷

The general property taxes paid by these companies are the same as already shown for domestic companies, with the exception of a special provision in the revenue law under which the net premium receipts of foreign insurance companies, other than life, are assessed and taxed as personal property. It is of interest to follow the historical development of this tax.

As early as 1844 a three per cent. license tax was levied on the gross premium receipts of foreign insurance companies.⁸ This was paid to the clerk of the County Commissioner's Court every six months and by him forwarded to the State Treasurer. It was, in the words of the statute, "to be considered as revenue of the State, and by the State Treasurer paid out as such." It was purely a state tax. The idea was probably borrowed from the Eastern States. New York in 1824 began to tax foreign fire companies ten per cent. of their gross annual premium collections in New York;⁹ in 1829 the application of the law was extended to marine companies; in 1837 the rate was reduced to two per cent. Maryland in 1839 imposed a two per cent tax. Our Illinois Legislature in 1843 evidently expected difficulty in enforcing their three per cent. tax on gross premiums, since they provided in the statute that the penalty for

⁷Liverpool Ins. Co. vs. Massachusetts, 10 Wallace, 566 (1870).

⁸Laws of Ill., 1843, p. 165.

⁹Seligman, *Essays on Taxation*, p. 150.

withholding any of the tax, was the infliction of a fine equal to double the amount withheld; and half was to go to the informer. The law does not seem to have gone into effect till 1844, and never to have been very productive of revenue. The following table shows the revenue under the law while it was in force:

1844	\$ 56.55
1845	58.44
1846	554.68
1847	208.07
1848	877.94
1849 & 1850.....	1269.68
1851	925.85
1852	184.40
1853	17.67

The constitutionality of this method of taxing foreign insurance companies was tested in the Supreme Court of Illinois in 1852.¹⁰ The case was a notable one in the history of litigation relative to the taxation of corporations. First, it was argued that the law was a violation of the "commerce clause" of the constitution of the United States, in that it was a regulation of commerce among the states. But the Court held, that issuing insurance policies was not commerce within the meaning of the "commerce clause", and therefore the law was constitutional. The decision on that point has been sustained by a series of United States Supreme Court decisions.¹¹ Second, it was argued that the law violated the "uniformity clause" in the Illinois constitution, which provided that "the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the valuation of the property which he or she may have in his or her possession."¹² But it was held by the court that the tax on foreign insurance companies was a license tax, even though the Clerk issued no

¹⁰People vs. Thurber, 13 Ill., 554 (1852).

¹¹Paul vs. Virginia, 8 Wallace, 168 (1868); Hooper vs. California, 155 U. S., 648 (1894); N. Y. Life Ins. Co. vs. Cravens, 178 U. S. (1900); Nutting vs. Massachusetts, 183 U. S., 553 (1901).

¹²Constitution of 1818, Art. VIII, Sec. 80.

licenses, and it was therefore not a tax within the meaning of the section of the constitution cited.

The next year, 1853, the general assembly provided a new revenue law under the power provided in the constitution of 1848. Section 32 of that law prescribed the method of listing the real and personal property of railroads, turnpike, plank road, insurance, telegraph, and other joint stock companies, except corporations whose taxation was specifically provided for by law. But the section ended with the important proviso, that every agency of an insurance company, incorporated by the authority of any other state or government, should return to the assessor of the county in which the office or agency of the company was kept, in the month of May, annually, the amount of the gross receipts of the agency, which was to be entered on the tax list of the county, and be subject to the same rate of taxation for all purposes that other personal property was subject to at the place where located.¹³

The changes to be noted are three; first, that the gross premium receipts by the law of 1853 were to be taxed not under the State power to levy a license tax on business done by a foreign corporation as from 1843 to 1853, but under its general power to tax the property of persons and corporations; second, that the property of foreign insurance companies in the shape of premium receipts was to be assessed not on the basis of the amount on hand on May 1st, but of the amount collected for the entire year preceding May 1st; third, this assessed valuation was to be subject to the county and other local tax rates as well as to the State tax rate. This was the method, in general, of taxing foreign insurance companies until 1869. However, in addition, several cities in their special charters during this time were granted power to tax and regulate foreign insurance companies. For example, Chicago levied a two per cent. gross premium receipts tax. The tax from the fire companies was used exclusively to promote the ef-

¹³Revised statutes, 1857, p. 1037.

iciency of the fire department, and for the disabled firemen's fund; that from the marine companies, for the improvement of the river and harbor; that from the life companies, for the improvement of sanitary conditions.¹⁴ In 1865 the legislature provided that this special tax "for city or local purposes" on any life insurance company was to be no longer permitted to the cities, but their right to tax fire and marine companies was not withdrawn.¹⁵

In 1868 the general agent of a New York insurance company resisted the collection of the general property tax upon the gross premium receipts of his agency on the ground that the law of 1853 was unconstitutional. The Supreme Court of Illinois sustained the validity of the law¹⁶ and the insurance company appealed to the United State Supreme Court. There it was argued that the law violated the constitution of the United States, which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states."¹⁷ But the Court held that a corporation is not a citizen within the meaning of the word as used in that particular section of the Constitution, and hence the Constitution was not violated by the Illinois law in question. Second it was argued that the law violated the principle of comity between states in that it discriminated between domestic and foreign corporations. But the Court held that comity between states is not obligatory when declared to be contrary to public policy, and that the state may discriminate between domestic and foreign corporations, even though it may not do so between natural persons or property. Hence the law in question was not unconstitutional.¹⁸

The statutory basis of the present methods of taxing receipts of foreign insurance companies, was laid in 1869.

¹⁴Private laws of Illinois, 1863, p. 98.

¹⁵Laws of Illinois, 1865, p. 88.

¹⁶Ducat vs. City of Chicago, 48 Ill., 172 (1868).

¹⁷Const. of U. S., Art. IV, sec. 2.

¹⁸Ducat vs. City of Chicago, 10 Wallace 410 (1870), following Paul vs. Virginia, 8 Wallace 168 (1868).

It was founded on the constitution of 1848. Since those sections of the revenue article of the constitution of 1848 which delegated and defined the taxing power of the legislature, were practically transferred bodily to the constitution of 1870, it was not necessary at the time of the general revenue act of 1872 to reenact or revise the insurance laws of 1869, in regard to taxation.

The legislature had in that year passed two general acts for the incorporation of insurance companies in Illinois; one on March 11th, 1869, for fire, marine and inland navigation insurance companies; the other on March 26th, for life insurance companies. Both acts are still in force. Neither of the two statutes contains sections providing special corporation taxes on domestic companies, except fees; but both contain sections providing for the taxation of foreign companies on premium receipts and also for taxing them by the so-called "reciprocal" taxes. The act relative to fire, marine and inland navigation companies contains a section, section 30, which provides for the taxation of foreign companies on their net receipts, instead of on their gross receipts, as from 1853 to 1869.¹⁹ The language of the statute was indefinite as to the time. The Auditor in 1873 interpreted it to mean that net receipts like money or any other such form of personal property were to be returned only to the amount that was on hand on the first day of May.²⁰ But he was mistaken. In 1879 the law was amended so as to read plainly "net receipts of such agency for the preceding year." In 1874 the Supreme Court held that a company was taxable on premiums in course of collection (and on its reinsurance reserve.)²¹ In 1905 the Supreme Court defined net receipts to mean "gross receipts less operating expenses, not including fire losses, and [does] not [mean] net profits."²² Section 30 of the gen-

¹⁹Laws of Illinois, 1869, p. 228.

²⁰Report to Gen. Assembly, 1873, vol. III, p. 652, copy of letter to Ducat.

²¹Republic Life Insurance Co. vs. Pollak, 75 Ill. 292 (1874).

²²National Fire Insurance Co. vs. Hanberg, 215 Ill. 378 (1905).

eral act for incorporating fire companies reads as follows:

Sec. 30. Every agent of any insurance company incorporated by the authority of any other state or government, shall return to the proper officer of the county, town or municipality in which the agency is established, in the Month of May, annually, the amount of the net receipts of such agency (for the preceding year)²³ which shall be entered on the tax lists of the county, town and municipality, and subject to the same rate of taxation for all purposes, state, county, town and municipal that other personal property is subject to at the place where located, said tax to be in lieu of all town and municipal license; and all laws and parts of laws inconsistent herewith are hereby repealed: Provided, that the provisions of this section shall not be construed to prohibit cities having an organized fire department from levying a tax or license fee, not exceeding two per cent., in accordance with the provisions of their respective charters, on (the)²³ said gross receipts (of such agency),²³ to be applied exclusively to the support of the fire department of such city.²³

This section was slightly amended in 1879 so as to express in exact words the meaning which had been intended by the legislature in 1869. The amendments are indicated above in the parentheses.

This same law of 1869 provided for a continuance of the charter rights of certain cities to levy a two per cent. license tax on the gross receipts of foreign fire companies, for the benefit of their fire departments.²⁴ This right had been granted to those cities only which had some sort of organized fire protection. In 1872 the general act for the incorporation of cities contained a provision of the same kind.²⁵ In 1895 an act was passed extending this power to all cities whether organized under the general incorporation act of 1872 or under some previously passed special act.²⁶ It was for the benefit no doubt of those cities which had received their charters before 1872 and had not been granted power to license and tax insurance companies. Since 1872 they had come to have organized fire departments and therefore to be eligible to have such taxing power. By surrendering their old charters they would

²³Law of 1869 did not contain words inclosed in parentheses.

²⁴Laws of Illinois, 1869, sec. 30, p. 228.

²⁵Laws of Illinois, 1872, p. 245.

²⁶Laws of Illinois, 1895, p. 104.

have been able to come under the general act of 1872 and have the coveted taxing power. But they did not care to surrender their old charters; so they gained their point by getting the law of 1895 passed.

It must be noted that foreign life insurance companies in contra-distinction to foreign fire companies, are not required to list their net receipts for assessment and taxation under the general property tax of the State. In 1896 a life company attempted to evade other taxes imposed by the Auditor by returning its net receipts as personal property and then claiming that it had complied with the revenue law. But the Supreme Court held that the law of 1869 in regard to taxing net receipts did not apply to life companies.²⁷

Reciprocal Taxes

Mention must now be made of a new feature which was added to the Illinois method of taxing foreign insurance companies by the law of 1869, a feature which is retained to-day, namely, the so-called "reciprocal taxes". Since the wording of the law is necessary to a clear understanding of its constitution, the section is given in full.

Sec. 29. Whenever the existing laws of any state of the United State, or any other kingdom or country, shall require of insurance companies incorporated by or organized under the laws of this state, and having agencies in such other states, kingdom or country, for the protection of the policy holders or otherwise, any payment for taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required for such purposes from similar companies of other states by the then existing laws of this state, then and in every case, all companies of such states establishing or having heretofore established an agency or agencies in the state, shall be and are hereby required to make the same deposit, for a like purpose, with the Auditor of this state, and to pay to the Auditor, for taxes, fines, penalties, certificates of authority, license fees, and otherwise an amount equal to the amount of such charges and payments imposed by the laws of such states upon the companies of this state and the agents thereof: Provided that the payment required of such foreign companies shall, in no case, be less than required by this act.

²⁷Union Central Life Ins. Co. vs. Durfee, 164 Ill. 186 (1896).

To the every day reader, this section of the insurance law means that if another state or country taxes Illinois companies in any way higher than the companies of that state or country are taxed in Illinois then the Illinois Auditor of Public Accounts (the Insurance Superintendent since 1894) shall impose like taxes upon the companies from that state or country. But the Supreme Court has held an interpretation which is far more stringent. For example, in 1886 Louisiana passed a law providing that foreign companies whose gross premiums were between \$20,000 and \$30,000 should pay a license fee of \$400. No Illinois company was doing insurance business nor had been doing insurance business in the state of Louisiana. Nevertheless Auditor Swigert proceeded to levy a "reciprocal tax" upon a Louisiana company doing business in Illinois. He did so on the ground that the mere passage of a law by Louisiana purposing to tax foreign companies, was sufficient reason for retaliation by Illinois. Our Supreme Court sustained Auditor Swigert in his interpretation of the law.²⁸

The constitutionality of the "reciprocity clause" was passed upon in 1882. The case was as follows. The State of New York in 1880 enacted a law taxing foreign companies eight-tenths of one per cent. on insurance premium receipts (other than life and mutual benefit). January 1st, 1882, Auditor Swigert of Illinois by authority of the "reciprocity clause" of the law of 1869, which up to that time had never been invoked, imposed a like tax upon New York companies for the year 1881. They paid under protest and sued for recovery, the case at last, in 1882, reaching the Supreme Court. Counsel argued (1) that the "reciprocal provision" was unconstitutional in that it amounted to a delegation of Illinois legislative power (the power of levying taxes) to the New York legislature. But the Court held that it was not a delegation of power even

²⁸Germania Ins. Co. vs. Swigert, 128 Ill. 237 (1889); reaffirmed, Union Central Life Ins. Co. vs. Durfee, 164 Ill. 186 (1896).

though the operation of the "reciprocal" provision was contingent on the enactment of possible laws in other states. Counsel for insurance company argued (2) that the law had been a dead letter for twelve years. But the Court held that the fact that no occasion had occurred for its use was no argument against its vitality and validity. (3) It was contended that since New York companies were taxed this 8/10 of 1 per cent. while other foreign companies were not, that it was a violation of the Illinois constitution which provides that taxes on corporations shall be uniform as to class. But the Court held that by the express provisions of the "reciprocity clause", companies of such foreign states (as New York) are "constituted a distinct class for the purposes of assessment and taxation here."²⁹

That this law might have been enforced during its twelve year fallow period if the Auditor had set about it, may be inferred from a remark of the Attorney General in 1882 in his report to the General Assembly. "Under this decision", referring to the above, "and through the vigilance of the Auditor a considerable revenue will be obtained for the state that has heretofore been lost."³⁰ This may be indicated also in a statistical way. Ever since 1872 the Auditor, as required by law, has reported the fees collected from insurance companies. While he does not give separate account of those taxes collected from foreign companies under this "reciprocal tax", a bulge in the returns about the time of this decision in 1882 and thereafter indicates the presence of "reciprocal" taxes in the sums.

The revenue from insurance fees for the biennial period 1870-72 was \$21,972.65; and the revenue from this source increased but slowly to \$46,074.95 for 1880-82. With the enforcement of the "reciprocal taxes" from foreign companies in the next biennium there was a marked increase to \$168,131.39; and since then the revenue from insurance

²⁹Home Ins. Co. vs. Swigert, 104 Ill. 653 (1882).

³⁰Rep. to Assembly, 1882, vol. I. Att'y Gen., p. 13E.

companies has continued to increase rapidly. In the two years 1894-6, the revenue amounted to \$328,475.42; for 1900-02 it was more than \$600,000; and for the past few years has averaged about \$500,000 a year. Whatever may be thought of the incidence or the equity of the "reciprocal tax" on foreign insurance companies, it is a productive tax.

Up to 1893, the insurance fees and taxes were collected by the Auditor of State. In that year a separate Insurance Department was established under the direction of the Superintendent of Insurance, who collects the revenue and pays it over to the State Treasurer. A comparison of the collections reported by the Insurance department with the amounts paid over to the State Treasurer, shows that up to 1904, the latter amounts for each fiscal biennium corresponded with the collections for the two calendar years ending the preceding December. In the biennial period ending Sept. 30, 1906, the treasury receipts appear to include the collections for the three calendar years 1904, 1905 and 1906, as well as some refunds by a former Superintendent of Insurance. During 1906-08, the treasury receipts include some further refunds of the same kind.

The following tables show the revenue from corporation fees and from insurance companies from 1870, and the fees and taxes collected by the Insurance Department since 1893.

TABLE III
CORPORATION FEES AND INSURANCE FEES AND TAXES

BIENNIAL PERIOD	INSURANCE FEES AND TAXES ^(a)	CORPORATION FEES ^(b)
1870-72 ^c	\$ 21,972.65	.....
1872-74 ^c	31,467.87	.....
1874-76 ^d	35,620.54	.....
1876-78	35,374.10	.....
1878-80	38,137.20	.....
1880-82	46,074.95	\$ 7,629.89
1882-84	168,131.39	11,934.05
1884-86	127,854.55	12,125.95
1886-88	121,822.09	.....
1888-90	162,535.29	21,699.24
1890-92	171,472.26	33,587.68
1892-94	117,275.58	74,054.02
1894-96	328,475.42	178,464.62
1896-98	356,826.87	388,529.26
1898-1900	358,448.50	625,452.79
1900-02	622,759.87	555,471.28
1902-04	593,001.16	680,681.17
1904-06	1,224,662.82	747,503.48
1906-08	939,854.20	815,425.89
1908-10	926,819.30	.....

(a) Received by State Treasurer. Compiled from Reports of Auditor of Public Accounts.

(b) Collected by Secretary of State. Compiled from Reports of Secretary of State.

(c) Fiscal year ending Nov. 30.

(d) Fiscal year ending Sept. 30.

TABLE IV.
FEES AND TAXES COLLECTED BY THE INSURANCE DEPARTMENT—1893-1910.
[COMPILED FROM THE REPORTS OF THE INSURANCE SUPERINTENDENT.]

CALENDAR YEAR	ANNUAL STATE-MENTS, FIRE AND LIFE	AGENTS' LICENSES	CHARTERS FILED	TAXES	FEES TWINSHIP & Co. MUTUAL FIRE	ASSESS-MENT ASSOCIA-TIONS	MISCEL-LANEOUS FEES	INTEREST ON DEPOSITS	EXAMIN-ATIONS OF COM-PANIES	TOTAL	FEES FOR ADVER-TISING	EXAMIN-ATIONS OF COM-PANIES
a	\$3,235.00	\$31,451.00	\$ 485.00	\$84,581.22	\$198.15	\$ 350.00	\$ 217.70	\$ 766.79	.....	\$121,284.86	\$17,680.00	.....
1893b	220.00	5,178.50	60.00	8,243.89	34.00	250.00	55.75	74.76	\$ 335.74	14,452.64	635.00	.....
c	3,455.00	36,629.50	545.00	92,825.11	232.15	600.00	273.45	841.55	335.74	135,737.50	18,315.00	.....
1894	3,375.00	37,162.00	555.00	85,600.59	219.15	855.00	460.05	1,805.94	5,601.32	135,834.05	18,950.00	.....
1895	4,280.00	41,630.00	730.00	124,464.44	259.00	1,185.00	861.00	2,069.61	2,024.68	177,503.73	20,095.00	\$1,944.52
1896	4,510.00	43,022.50	880.00	128,801.29	253.00	1,205.00	731.47	2,099.62	.....	181,502.88	21,050.00	2,634.36
1897	4,942.00	48,252.00	765.00	118,740.42	257.00	1,250.00	1,117.57	.....	.....	175,323.99	22,490.00	9,586.91
1898	5,096.00	57,331.00	880.00	110,314.66	238.00	1,310.00	1,942.26	.....	Special	177,111.92	23,770.00	35,736.81
1899	5,355.00	64,575.00	940.00	109,044.48	216.00	1,040.00	2,166.10	.....	Agents	183,336.58	24,885.00	.....
1900	5,145.00	63,903.40	360.00	271,134.15	261.00	877.00	3,287.20	.....	Surplus	344,967.75	.....	Rec. from
1901	5,005.00	62,742.20	475.00	204,181.11	249.00	815.00	4,324.80	.....	Lines	277,792.12	.....	Co.'s for
1902	4,080.00	61,695.50	685.00	335,891.93	215.00	811.00	6,267.15	.....	.....	409,645.58	24,343.00	Valuation
1903	5,100.00	63,382.50	630.00	269,240.50	214.00	800.00	6,172.15	.....	.....	349,389.15	.....	of Policies
1904	5,210.00	66,283.00	540.00	276,656.91	220.00	885.00	7,057.15	.....	.....	367,120.18	.....	.....
1905	5,526.00	73,460.00	795.00	255,422.72	252.00	1,032.00	18,210.00	.....	.....	359,124.03	.....	.....
1906	6,234.00	72,090.00	1,170.00	231,141.51	224.00	1,225.00	11,793.95	.....	.....	326,826.09	.....	\$3,972.95
1907	6,280.00	76,894.50	1,185.00	479,024.67	228.00	1,030.00	14,844.55	.....	.....	585,986.81d	.....	4,453.52
1908	5,615.00	79,291.50	780.00	350,228.85	230.00	1,125.00	15,312.07	.....	.....	29,390.00	.....	4,563.47
1909	5,820.00	83,462.00	890.00	353,788.92	231.00	1,125.00	6,019.30	.....	.....	29,895.00	.....	.....
1910	6,235.00	88,566.00	1,140.00	372,568.35	230.00	1,170.00	8,417.82	.....	.....	466,508.71	30,180.00	.....
									5,798.45	495,125.62	31,770.00	.....

a Jan. 1—July 20, 1893, by Auditor of Public Accounts.

b July 20—Dec. 31, 1893, by Insurance Superintendent.

c Total for 1893.

d Less amount protested and held in trust (\$1,886.12) equals \$584,100.69.

CHAPTER VI.

OBSERVATIONS AND DEDUCTIONS

In 1889 Auditor Swigert defended the present system of taxing corporations and presented resolutions from the Board of Equalization which averred that, as an assessor of corporations, it was doing better work than local assessors of property were doing. On the other hand, in 1895 Governor Altgeld called a special session of the general assembly to do away with the system because of its poor work with corporations. In 1911, a Special Tax Commission authorized by the forty-sixth assembly, reported as its opinion of the State Board of Equalization that the large membership of the board, its elective character, its inadequate powers and the short time which is allotted to it to perform its duties, prevent it and would prevent any similar board, from becoming a very efficient body in the administration of the tax laws.¹

As a basis for discussing these opposing views of the work of the State Board of Equalization, some statistical data in regard to the assessments made by this body are presented in the following table.

In 1873, the first year of capital stock assessments, the State Board of Equalization assessed the excess value of capital stock of corporations, other than railroads and the Western Union Telegraph Co. at \$20,730,057. This included 34 public service corporations, assessed at \$6,325,216, and 170 other corporations at \$15,573,235. The next year, 224 corporations were assessed on their capital stock but the total assessment was only \$11,719,216. In 1875, only 100 corporations were assessed, for \$4,802,112; and by 1877 only 33 corporations were assessed for \$1,605,783. The total assessed valuation of all property in the state had also declined, from \$1,355,401,307 in 1873 to \$931,199,308 in 1877; but the capital stock assessments had been reduced in

¹*Report of the Special Tax Commission, January 15, 1911.*

TABLE V.

CAPITAL STOCK ASSESSMENTS OF ILLINOIS CORPORATIONS,
OTHER THAN RAILROAD COMPANIES, BY THE ILLINOIS
STATE BOARD OF EQUALIZATION, 1873-1910.

[COMPILED FROM PROCEEDINGS OF THE STATE BOARD OF EQUALIZATION.]

YEAR	NO. OF CORPORATIONS ASSESSED <i>a</i>	VALUE OF CAPITAL STOCK REPORTED	FULL VALUE OF CAPITAL STOCK & FRANCHISE	EQUALIZED VALUE OF CAPITAL STOCK & FRANCHISE	EQUALIZED VALUE OF TANGIBLE PROPERTY	NET ASSM'T OF CAPITAL STOCK
1873	207	.....	.....	.....	.....	\$ 20,730,057
1874	224	\$ 40,777,920	\$ 38,958,489	\$ 25,118,105	\$ 13,398,889	\$ 11,719,216
1875	100	28,750,356	20,548,266	10,283,176	7,285,636	4,802,112
1876	87	.....	.....	.....	.....	3,373,751
1877	33	.....	.....	.....	.....	1,605,783
1878	46	.....	.....	.....	.....	1,837,556
1879	40	.....	.....	.....	.....	2,218,370
1880	29	.....	.....	.....	.....	2,179,460
1881	61	.....	.....	.....	.....	2,191,488
1882	91	.....	.....	.....	.....	2,397,986
1883	85	.....	.....	.....	.....	2,218,430
1884	80	.....	.....	.....	.....	2,087,902
1885	114	54,832,525	.....	9,078,083	5,286,460	3,791,623
1886	148	51,916,688	.....	8,942,358	5,185,781	3,756,577
1887	217	66,319,922	.....	10,241,903	6,670,997	4,289,706
1888	246	95,888,014	.....	13,158,666	8,069,435	5,089,231
1889	284	89,721,889	.....	13,431,629	8,594,313	4,857,545
1890	305	100,842,771	.....	14,582,584	9,007,615	6,956,909
1891	373	115,210,045	.....	15,939,336	11,493,980	6,273,693
1892	322	120,580,801	.....	15,933,182	11,287,807	6,549,202
1893	237	92,724,506	.....	14,503,129	9,139,150	5,363,979
1894	249	167,045,035	.....	15,735,390	10,740,613	4,994,747
1895	252	179,177,258	.....	14,975,288	10,192,779	4,782,509
1896	251	139,331,694	.....	14,794,660	10,764,276	4,030,384
1897	273	170,304,024	.....	15,908,424	11,857,591	4,050,833
1898	236	146,416,190	.....	14,694,000	12,260,595	2,433,425
1899	302	202,470,405	132,575,625	26,515,125	24,166,922	2,348,203
1900 ^b	266	236,067,920	129,489,040	25,897,808	21,089,178	4,808,630
1901	328	287,948,878	392,761,090	78,552,218	57,074,275	21,477,943
1902	1988	398,540,701	283,859,235	56,771,847	34,066,220	22,705,627
1903	1520	253,613,202	199,408,930	39,881,786	24,715,682	15,116,104
1904	1442	384,585,475	181,933,195	36,386,139	23,353,727	13,032,412
1905	1218	304,407,993	189,669,395	37,933,879	24,990,909	12,942,970
1906	1832	409,493,895	300,387,685	60,077,537	47,077,537	12,665,601
1907	1302	333,628,590	269,504,175	53,900,835	43,292,835	10,608,000
1908	1281	364,763,492	304,300,790	60,860,158	42,176,710	18,638,448
1909	1168	328,077,216	261,362,997	87,120,999	51,726,558	35,394,441
1910	2154	.....	.....	.....	.....	30,347,348
1911	930	.....	.....	.....	.....	30,568,450

^a See Table I for number of corporations not reporting and the number of corporations found to have no "excess" over tangible property.

^b Original assessment.

TABLE VI.
ASSESSMENTS BY ILLINOIS STATE BOARD OF EQUALIZATION,
1873, 1880, 1890, 1902, 1908, 1909.

1873.			
	COOK COUNTY	OTHER COUNTIES	TOTAL
Equalized Value of Railroad Track and Rolling Stock	\$3,611,282	\$55,706,126	\$59,317,408
Capital Stock—			
Railroads	(11) 2,510,982	(48) 62,100,089	(51) 64,611,071
W. U. Telegraph Co.....	(1) 73,253	(1) 1,095,141	(1) 1,168,394
Other Public Service Corporations.....	(9) 5,052,077	(27) 1,273,139	(36) 6,325,216
Other Corporations.....	(35) 6,583,527	(143) 7,821,314	(178) 14,404,841
Total Capital Stock.....	(56) 14,219,839	(219) 72,289,683	(266) 86,509,522
Total by State Board of Equalization	\$17,831,121	\$127,995,809	\$145,826,930
1880.			
Railroad Track and Rolling Stock.....	\$4,314,124	\$40,287,691	\$44,601,815
Capital Stock—			
Public Service Corporations	(6) 514,000	(14) 255,789	(20) 769,789
Other Corporations.....	(3) 1,245,297	(6) 164,374	(9) 1,409,671
Total Capital Stock.....	(9) 1,759,297	(20) 420,163	(29) 2,179,460
Total by State Board of Equalization	\$ 6,073,421	\$40,707,854	\$46,781,275
1890.			
Railroad Track and Rolling Stock	\$12,075,785	\$60,718,611	\$72,794,396
Capital Stock—			
Public Service Corp'ns..	(26) 3,726,335	(112) 1,094,915	(138) 4,821,250
Other Corporations.....	(66) 1,277,860	(110) 857,799	(176) 2,135,659
Total Capital Stock	(85) 5,004,195	(223) 1,952,714	(314) 6,956,909
Total by State Board of Equalization	\$17,082,880	\$62,668,425	\$79,751,305

TABLE VI.—(CONTINUED)

1902.

	COOK COUNTY		OTHER COUNTIES		TOTAL
Railroad Track and Rolling Stock.....		\$20,628,933		\$64,990,109	\$85,619,042
Capital Stock					
Railroads	(6)	2,649,410	(2)	1,642	(8) 2,651,062
Other Public Service Corporations	(23)	15,794,471	(194)	1,103,621	(217) 16,898,092
Other Corporations.....	(1449)	5,395,595	(322)	411,940	(1771) 5,807,535
Total Capital Stock.....		23,839,476		1,517,213	25,356,689
Total by State Board of Equalization		\$44,468,409		\$66,507,322	\$110,975,731

1908.

Railroad Track and Rolling Stock—					
Steam Roads.....		\$19,081,386		\$75,786,127	\$94,867,513
Electric Roads.....		5,824,501		2,733,130	8,557,631
Total.....		\$24,905,887		\$78,519,257	\$103,425,144
Capital Stock—					
Railroads	(6)	1,159,542	(4)	932,674	(8) 4,092,306
Public Service Corp'ns..	(11)	16,863,000	(30)	360,000	(41) 17,213,000
Other Corporations.....	(872)	1,261,298	(204)	209,150	(1076) 1,470,448
Total Capital Stock.....	(889)	19,273,840	(238)	1,501,914	(1125) 20,775,744
Total by State Board of Equalization		\$44,179,727		\$80,021,171	\$124,200,888

1909.

Railroad Track and Rolling Stock—					
Steam Roads		\$32,309,833		\$129,121,743	\$161,431,576
Electric Roads		\$9,409,919		4,842,098	14,252,017
Total.....		\$41,719,752		\$133,963,831	\$175,683,693
Capital Stock—					
Railroads	(8)	1,629,766	(10)	1,345,515	(15) 2,975,281
Public Service Corp'ns..	(44)	30,903,341	(102)	733,900	(146) 31,637,241
Other Corporations.....	(920)	3,540,500	(102)	216,700	(1022) 3,767,200
Total Capital Stock	(972)	36,073,607	(214)	2,096,115	(1183) 38,379,722
Total by State Board of Equalization		\$77,793,359		\$136,259,946	\$214,063,413

TABLE VII

ASSESSED VALUATION OF SPECIFIED CORPORATIONS

YEAR	PULLMAN PALACE CAR Co.	PACIFIC HOTEL Co. (CHICAGO)	QUINCY HORSE RAIL- WAY AND CARRYING Co.	ST. LOUIS NATIONAL STOCK YARDS Co.	TRADER'S INSURANCE Co. (CHICAGO)	CHAMPAIGN- URBANA GAS, LIGHT AND COAL Co.
1873 t	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
a	a	a	a	a	a	a
B	2,100,000	350,000	35,000	350,000	131,839	34,539
1874 t	.....	570,000	.....	.....	.....	29,400
a	a	360,000	a	a	a	14,110
B	Not listed	210,000	30,000	Not listed	396,745	15,300
1879 t	.....	.....	.....	.....	.....	.....
a	a....	b	b	b	b	b
B	120,000	b	b	b	b	b
1884 t	.....	.....	.....	.....	.....	.....
a	a	a	a	a	a	a
B	144,000	Not listed ^c	5,000	100,000	15,000	5,000
1889 t	1,091,360	People's Gas	20,000	250,000	146,000	12,500
a	704,558	Light & Coke	16,965	140,287	112,500	4,327
B	386,802	Company	3,035	109,713	33,500	8,123
1894 t	1,743,595	250,000	40,000	266,000	110,000	16,000
a	1,149,771	227,984	23,445	102,596	100,100	13,950
B	593,824	22,015	16,555	163,404	9,900	2,050
1900 t	2,890,365	3,865,893 ^e	60,000	275,000	187,095	50,000
a	2,490,365	3,415,893	28,393	235,368	137,095	25,045
B	400,000	450,000	31,607	39,632	50,000	24,955
1901 t	4,512,648	8,642,390 ^e	75,000	263,181	170,022	59,933 ^d
a	3,012,648	2,859,393	47,244	213,181	110,022	29,933
B	1,500,000	5,782,997	27,756	50,000	60,000	30,000
1902 t	4,791,667	8,983,547	74,282	246,477	169,805	49,588
a	3,143,626	4,303,668	48,266	196,477	109,805	29,588
B	1,648,041	4,679,879	26,016	50,000	60,000	20,000
1908 t	23,348,900 ^f	9,879,753	76,800	50,000	g	54,185
a	21,348,900	4,898,955	56,800	a	g	52,185
B	2,000,000	4,980,798	20,000	50,000	g	2,000
1911 t	10,297,865	18,012,400	141,144	40,000	g	97,789
a	6,043,487	10,195,860	107,144	a	g	94,789
B	4,254,378	7,816,540	34,000	40,000	g	3,000

t means total tax valuation for the year.

a means local assessor's valuation on tangible property, equalized.

B means Board of Equalization's assessment of "excess".

- a Data not to be found in the report of the Board's proceedings.
- b No figures given; but Board reports company in the list of those which it found to have no "corporate excess" over and above the equalized value of tangible property locally assessed.
- c The Pacific Hotel goes out of business or changes name; it was put into this list because it was one of the first to fight the assessment of the Board of Equalization.
- d Urbana and Champaign Railway, Gas and Electric Co. from here on.
- e This was one of the twenty companies re-assessed by the Board in 1901 for the year 1900, under the established rules as ordered by the Supreme Court of the State. As corrected its 1900 assessment is: total equalized value, \$12,632,960; assessment by local assessor, \$3,415,893; assessment by Board \$9,217,067. It should be noted, too, that the re-assessment of this and the other nineteen companies raised the total assessment for the state about \$32,000,000 above the figures given in the Board's report.
- f In 1906 the Board for the first time put the Pullman Co. up to the range of valuation it now enjoys,—\$28,744,481 in 1906 and \$27,180,920 in 1907.
- g This company was rendered insolvent by the great losses it sustained in the San Francisco conflagration. (Insurance report for 1907).

a much greater proportion—from 1.3 per cent to .17 per cent of the total assessed valuation of the state.

In 1880 only 29 corporations (the minimum number) were assessed on their capital stock. After this date the number of corporations assessed increased, and the assessed valuation of capital stock also increased slowly to \$6,956,909 in 1890. By the latter date, more than two-thirds of the capital stock assessment was on public service corporations. During the next decade, the capital stock assessments again declined to a minimum of \$2,348,203 on 302 corporations in 1899. This was about .25 per cent of the total assessed valuation of all property in the state.

Following the Teachers Federation case, the capital stock assessments showed a sudden increase, both in the number of corporations and the aggregate assessed value, to \$22,705,627 (about 2.2 per cent of the total assessed valuation) on 1988 corporations in 1902. More than three-fourths of the total assessment was on 217 public service corporations. But this increase was followed by a steady decrease for five years, to an assessment of \$10,608,000 on 1302 corporations in 1907. In 1908 capital stock assessments amounted to \$18,683,448; and in 1909 under the new rule providing that the taxable value should be one-third of the market value instead of one-fifth as formerly, the capital stock assessments of corporations other than railroads by the State Board of Equalization was \$35,394,441, —about 1.7 per cent of the total equalized valuation of \$2,158,648,450 for all property in the state.

The increase in capital stock assessments since 1900 has been mainly due to the assessments on a small number of corporations in Cook County. In 1909, the capital stock assessments on corporations other than railroads in Cook County was \$34,443,841, of which \$30,903,341 was on 44 local public service corporations. In all the other counties, the capital stock assessments were only \$950,600, less than three per cent of the total for the state; and of this \$733,900 was for local public service corporations.

Of the 1168 corporations assessed for capital stock in

1909, only 15 were assessed for as much as \$100,000, and only 95 for as much as \$10,000. The others were assessed for a few thousand or a few hundred dollars each.

The companies whose assessments are shown in Table VII are fairly representative of different interests and different business locations. The years chosen are those covered by seven Boards differing in personnel. Lean and fat business years are both represented. And years of placid administration by the Board, 1884 and 1889, are chosen to compare with such troublous years as 1900 and 1901 when outside pressure from the courts and others was brought to bear upon them.

At best, a statistical table can only tell half the truth. For example it may be noted that the assessment by the Board in 1873 was not equaled again till after 1901. Even as late as 1894 the "excess" was only \$4,994,777. The Bureau of Labor Statistics of Illinois, in its report on Illinois taxation, which has been noted all over the country, compared the assessment by the Board in 1894 with that made in 1873—the ratio is 5 to 22—and used this comparison as a count in condemning the Board's efficiency as an assessor of corporations. Neither by way of defending the Board nor by way of casting reflections on the Bureau's statistical methods, but simply to show that such a comparison is not wholly fair, it must be explained that since 1873 conditions have materially changed. 1. The figures for 1873 include the assessment of the Western Union Telegraph Company which was vacated by the Supreme Court; and also, as has been mentioned before, the assessment was abnormally high in 1873, its initial year, because of padding of the debt returns by the companies. They were under the mistaken idea that it would reduce the assessment on their capital stock, whereas the opposite result was actually occasioned. Moreover other property was valued at a higher rate in 1873 than at any time since. 2. The figures for 1879 and all the years since then would be considerably higher if certain classes of corporations which were assessed in 1873 had not been exempted from

the Board's jurisdiction by laws passed in 1879, 1893 and 1905. And this exemption includes, as we have seen in chapter IV, the exemption of thousands of corporations, some of them being eight figure concerns, and with hundreds of millions of capital stock. The simple fact then, that in 1894, as the Labor Bureau pointed out, the Board's assessment of "corporate excess" to corporations was not as great as it was in 1873, is not in itself *prima facie* evidence of the Board's inefficiency.

Again, a study of the Board's reports will lead to the deduction that often an increase in assessment by the Board has been followed by an increase in the assessment of tangible property by the local assessor; and since such a local assessment has to be deducted by the Board from the total valuation so as to determine a corporation's "excess", the consequence is that the next year it appears as if the Board had not assessed the corporation as high as it did the year before. For example, table VII shows that the Board's capital stock assessment to the Pullman Company has never been as high again as it was in 1873. When the Board levied a large assessment, the local assessors raised their assessments. Another illustration may be noted in the case of the Urbana-Champaign Railway, Gas and Electric Company in the years 1901, 1902, and 1908. A fairer basis to use in judging the Board's efficiency would be that of the yearly valuations which it puts upon a corporation's entire property—that is, the full value before being equalized. But such data are not available. Reference to Table I will show that in nineteen of the forty years of its administration, the Board has kept to itself all information of its proceedings on that point. Further, twenty-five times only out of the thirty-seven has it shown even what the total equalized value was, and in eight of the twenty-five cases has failed to disclose the basis of its equalization. This leaves seventeen years of figures; but from those must be deducted eight on account of the unspecified undervaluation since 1902. So the hope of securing statistics

on the actual value of the corporations as considered in the Capital Stock Committee must be given up.

If we compute the ratio of the Board's total valuation of corporations to the total valuation of property in the state, we find that in 1873 this was 22 to 1355; in 1899 it was 13 to 792; in 1894, 16 to 824; in 1900, 25 to 810; in 1901, 78 to 999; in 1908, 61 to 1263. Thus it appears from 1889 to 1901 the total valuation of the corporations which were assessed by the Board increased more rapidly than the total tax valuation of the state; but from 1901 to the present the Board's valuation of corporations has fallen behind. But here again the comparison is from insufficient data. There are no statistics as to the valuation put by the Board upon those corporations whose valuation was found to be equal to or less than the value assessed by the local assessor. Such statistics as would be of use can not be secured from the Board's reports. So the resolutions of the Board in 1888 to the effect that its assessment of corporations "as shown by its reports" was increasing while local assessments of all property in the state was decreasing² may be taken with a grain of salt.

This statement leads to the consideration of the other side of the case. Was Governor Altgeld correct in his assertion that the present system is "a giant of injustice", that most of the smaller corporations are properly taxed while many of the larger ones escape?³ It can not be proved from Table VI, but the conjecture can be supported by certain facts. It will be recalled from the previous discussion that 1900 and 1901 were years when great pressure was brought to bear upon the Board to coerce it to do its whole duty. A comparison of assessments of the great franchise corporations in columns two and three of Table VII with the others, tends to support the declaration of the ex-Governor. Since the mandamus of the courts in 1901, the Board has increased the Pullman Company more than

²*Proceedings State Board of Equalization*, 1888, p. 81.

³Reports to Gen. Assembly, 1895, vol. I, p. 24.

1100 per cent. on its 1894 valuation; it has raised the People's Gas Light & Coke Company more than 3900 per cent; while the small Quincy Horse Railway & Carrying Company has been increased only 96 per cent.; the St. Louis National Stock Yards has been increased 56 per cent.; the Urbana-Champaign Railway, Gas Light & Electric Company has been increased 250 per cent. The last named may be largely accounted for by the addition since 1894 of the railway and electric business. The writer does not claim that these items prove the Board to be inefficient. But they are straws blowing in that direction.

Evidence may also be adduced by checking the Board's reports with those of the Insurance Superintendent and of the Auditor of Public Accounts. For example, in 1901, the very year when the most pressure was brought to bear on the Board, it failed to assess the domestic life insurance companies and fell far short of the proper valuation of the domestic fire companies which it did assess. From the insurance report for the year 1901 the following facts are deduced. The number of incorporated fire companies assessable by the Board was six. Their admitted ledger assets over and above liabilities, amounted to the sum of \$7,889,024. At a 14 per cent. valuation their property amounted to \$1,104,463. But to avoid the possible error of including shares of national banks located in other states, or United States bonds or shares of stock of companies taxed on their capital stock by the Board, a 14 per cent deduction on the sum of such property is due, to the amount of \$186,163.

This deduction leaves \$918,300 that was taxable in 1901. Now turning to the Board's report for 1901 it is seen that the actual assessment was much less than that amount. The local assessment on tangible property was \$212,554, the Board's "corporate excess" was in all only \$150,040, a total of \$362,594. This was more than half a million less than it should have assessed those companies. It looks as though the Board let the fire companies off lightly. Further, from the same insurance report the fact

may be similarly deduced that the three domestic life companies in that year had taxable property, at a 14 per cent. valuation, to the amount of \$198,648. But the Board's report contains no reference whatever to those companies. The 1902 insurance report shows that only one paid a tax. That was a Chicago company that paid about \$3,000. At a five per cent. rate of taxation this would give that company a valuation of only \$60,000. It might reasonably be expected that an efficient Board would assess these companies something at least.

Turning now to the Auditor's report for 1906, we find that there were three Illinois trust companies which were not organized under the banking laws but under the general incorporation law, and hence taxable by the Board. It did value one of them, the Illinois State Trust Company, of Springfield; but it did not find that the company was worth any more than the local assessor had valued it, namely, \$56,000. Now by a process similar to that used in the case of the insurance companies just discussed,—that is by throwing out all the stocks and bonds lest some should be stock of national banks located in other states or U. S. bonds or stocks of companies taxed by the Board on capital stock,—it can be shown that the Illinois State Trust Company under inspection of the Auditor, was worth, at a 14 per cent. valuation, \$194,865. Thus it appears that the Board might have assessed this company nearly \$150,000 "corporate excess." But it did worse than that in the case of the other two trust companies. The Chicago Title & Trust Company had a capital stock of \$5,000,000 and undivided profits of \$1,113,515.89. The Equitable Trust Company had a capital stock of \$500,000; a surplus in the sum of \$500,000; and undivided profits of \$30,796. The first had resources of \$6,116,245; the second, of \$5,836,037. But no trace of any action by the Board in regard to either of these companies is discernible in their report.

If insurance companies and trust companies, which can be located and can be valued by aid of the official reports

of the Superintendent of Insurance and of the Auditor, are not all assessed; and if those that are assessed, are improperly assessed by the Board even after a severe castigation by the Supreme Court; what may be concluded as to its efficiency in general as an assessor of corporations? After giving the Board the benefit of every doubt in the statistical discussion, these facts together with those brought out in the discussion of the mandamus action against the Board in 1901, force a conclusion in the negative. The board has not proved to be an efficient body for the assessment of corporations.

Before venturing to suggest a remedy, it may be well to summarize the legal decisions and the deductions from the investigation of the workings of the system.

1. We have seen that the capital stock, within whose valuation are considered bonds and franchise, is in the aggregate held to be personal property taxable to the corporation.

2. We have seen that national banks cannot be taxed on their capital stock.

3. We have seen that certain classes of corporations are taxable on both their tangible property valuation and a "corporate excess" valuation which is determined by deducting the value of locally assessed tangible valuation from the assessed and equalized capital stock, debt and franchise valuation; also that shares of stock of such corporations are not taxed to the holders thereof.

4. We have seen that for years certain classes of corporations have been exempt from taxation on their capital stock on the supposition that it is constitutionally allowable thus to favor certain business enterprises.

5. The decisions of the Supreme Court, however, hold that no capital stock can be by law exempt from taxation. And if the case came up no doubt the Supreme Court would hold that no shares of capital stock can be exempt from taxation even though the capital stock be assessed by the Board of Equalization. For the Court has held that the aggregate of capital stock is distinctly property of the

corporation; while shares of stock are distinctly property of individuals. The constitution does not provide that any such property can be exempted by the legislature; and the courts have overruled every other consideration in holding that no property may be exempted by the legislature which is not specifically permitted by the exemption clause of the constitution.

The situation in the state to-day, then, stands as follows. The capital stock and franchise of every business corporation (except national banks) is, under the present revenue system, as construed by the courts, assessable either by the Board of Equalization or by the local assessor. Of those that are left to the local assessor, we have seen that while banking corporations with an admirably well worked out system of listing their property, are in recent years assessed more than other classes of corporations, the heretofore exempted classes of corporations, the "purely manufacturing, mercantile, coal mining and selling, printing, publishing and stockbreeding" companies, are especially difficult for the local assessor to assess on capital stock, as no provision in the revenue law gives him power to command information from the companies. Of those corporations which still remain subject to the assessing power of the Board, it has just been shown that they are more or less inefficiently assessed. The main causes of this failure of the system that have been brought out in this study are two, namely, (1) the failure of the Board to secure data for the valuation of corporations, and (2) the failure of the Board to do its whole duty. Finally, the general conclusion of the whole study of the taxation of corporations in Illinois, other than railroads, since 1872, is that they are not properly taxed under the present system.

Now the writer ventures to suggest a remedy. It is not advocated that revolutionary measures must be taken. But as long as the value of property is held to be the test of ability for sharing tax burdens, and as long as state and local revenues are levied on the same assessment basis, this

“corporate excess” method must be improved. Properly worked it would bring all competing corporations before the same assessing body, where each could be taxed as a going concern by the same rules. If the Board we have were at work the year round, with power to assess the tangible property of corporations, and with power to compel the production of corporation books and papers, no doubt the present plan might work more effectively. But the number of members makes the Board unwieldy; while the method of election by districts gives no assurance of either special qualifications or of any real responsibility, which are necessary to secure efficiency. A small body of experts appointed by the Governor would occupy such a position, especially if their term of office were that of “good behavior”. The work and the reports of such an assessing body must be an open book to the public. To provide for this, the general forms and procedure in the collection of data, the use of the same and the statistical reports of the same as well as all the reports of the special proceedings of the state assessing body, must be mapped out for that body. The general assembly is not the agency to work out such detailed regulation. It is a special work for a commission made up of masters in the theory of taxation and of experts in the business methods of corporations.

Such a small board of experts as is here proposed, has been recommended by the Special Tax Commission, in its report submitted to the general assembly by Governor Deneen in 1911. Governor Dunne in his inaugural address has also urged the abolition of the State Board of Equalization, and the creation of a permanent State Tax Commission, to exercise its functions and to have general supervision over the administration of the revenue laws.

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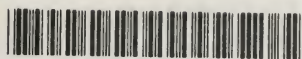
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